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ABSTRACT

The focus of this congressional hearing on job retraining is on examination of the linkage between industrial competiveness and retraining and examination of the actions necessary to ensure that American workers are equipped with appropriate skills. Testimony includes statements and prepared statements from Representatives in Congress and from individuals representing Secretary of Labor, State of Delaware; TRW Inc.; American Society for Training and Development; George Washington University; and the U.S. Department of Labor. An appendix contains additional submissions, including the National Training Incentives Act, H.R. 5159 (issues for discussion and an explanation of the National Training Incentives Act of 1984), a digest of draft legislation to be proposed providing for incentives for worker training; and information on the National Individual Training Account Act. (YLB)

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RETRAINING OF DISPLACED WORKERS

ED251638

HEARING

BEFORE THE

SUBCOMMITTEE ON ECONOMIC STABILIZATION

OF THE

COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS HOUSE OF REPRESENTATIVES

NINETY-EIGHTH CONGRESS

SECOND SESSION

JULY 31, 1984

Serial No. 98-107

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RETRAINING OF DISPLACED WORKERS

TUESDAY, JULY 31, 1984

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ECONOMIC STABILIZATION,
COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:40 a.m., in room 2220, Rayburn House Office Building, Hon. Mary Rose Oakar presiding.

Present: Representatives Vento, Oakar, Coyne, Levin, Torres, Shumway, and Wortley.

Ms. OAKAR. The subcommittee will come to order.

The House Banking Economic Stabilization Subcommittee is holding hearings today on an issue critical to our Nation's ability to remain competitive—job retraining. I asked for this hearing because of the importance of examining the linkage between industrial competitiveness and retraining.

The Economic Stabilization Subcommittee has held extensive hearings over the past year on how to make American industry competitive at home and abroad. I want today to explore, in a bipartisan manner, innovative approaches to job retraining that will allow our Nation's workers to contribute fully to this effort. I would like to give special thanks to Chairman LaFalce for the opportunity to examine this issue.

Retraining and industrial competitiveness go hand-in-hand. To remain competitive, American businesses must utilize state-of-the-art equipment and production methods. At the same time, American workers must be able to adapt to the new equipment and production techniques. This places great burdens and responsibilities on business and labor. New approaches are required to assist both business and labor and our Nation as a whole.

The issues we are addressing today are of great concern to the Northeast-Midwest Congressional Coalition, which comprises over 200 Members of Congress, and in particular, to its Task Force on Employment and Training which I cochair with Representative Sherwood Boehlert of New York.

The Coalition, whose members represent our Nation's industrial heartland, has devoted the past year-and-a-half to examining the changes in American industry and the American workplace and ways to prepare our country and our region for the future. Last year, it held hearings in seven cities on various aspects of this problem. The Coalition then convened a national conference last October on Shaping the Workforce of the Future. Following the conference, it established the Task Force on Employment and

Training to develop and work for the adoption of the employment and training agenda for the next several years.

The goal of all of us today is to ease the adjustment of business and labor to the profound transformation the American economy is undergoing. Old mainstay industries are shrinking and adopting new production methods. New industries are emerging which require new skills. These changes are placing great demands on American workers. We see these changes in the scaling back of the steel and automobile industries, in the increased use of robots and computers in those old industries, in the growth of high technology industries, and in the great expansion of jobs in the service sector of our economy.

These changes have been occurring at a time when the U.S. economy has experienced a very severe recession. While the economy has been recovering, the recovery has been stronger in some regions than in others.

In my home State of Ohio, for example, recovery has lagged and the unemployment rate is still higher than the national rate. This lag is also seen in other Midwestern States, and in pockets in other States around the country. Thus, jobs remain as critical an issue as training. Jobs and training cannot be separated. Many of the new jobs being created today require new skills. These new skills can only be acquired through training. Job creation and retraining are the keys to rebuilding the U.S. economy. If enough good jobs can be created in a timely manner and if American workers can be prepared for those jobs, then we can make the economic changes that we must with speed, grace, and confidence.

Today's hearing will examine the actions that are necessary to ensure that American workers are equipped with appropriate skills.

Our region and our Nation must assure that they are never caught short again. A recent report by Cleveland's Ameritrust Corporation on the Midwest's economic outlook put its finger on our most critical need—keeping our workers up-to-date.

As the Economic Stabilization Subcommittee considers the jobs and training issue, it must remember that workers will have several jobs throughout their lifetime, something we seem to have forgotten in the past. Training and retraining are thus essential and go hand-in-hand with job creation. We need concrete, well-thought-out programs to give workers the means to get this retraining. These programs must provide workers with the security to adapt to change. They must also assure that our workers will no longer find the future frightening.

I have first-hand experience with this problem. I have visited, along with my colleagues on the Coalition Task Force, factories and training facilities and have met with people on the frontline of job training. We have visited many facilities in one region, including the Polaris Joint Vocational Center in Greater Cleveland, one of Ohio's outstanding vocational training facilities. I spoke with many unemployed workers who were unable to receive needed retraining simply because they could not afford the $1,000 tuition.

I want to add here that we learned on our visit that the Polaris Center has a tremendous record of placing workers in jobs after they completed their training program. Whenever they retrained

people, the job was out there waiting for them. Without the training, they could not get the job.

The visit convinced me of the need for programs and initiatives that will make sure that workers will be able to receive the training to allow them to get the new skills that their jobs will require.

One program is the National Individual Training Account Act of 1984—H.R. 4832—which two of my colleagues, Dick Durbin and Sherry Boehlert, will discuss today. The bill was introduced earlier this year by the Northeast-Midwest Congressional Coalition and its Task Force on Employment and Training. This bill would allow workers to set up a tax-sheltered savings account to pay for needed retraining. It is the type of innovative, result-oriented program that will make retraining available to workers. It is the type of cooperative, long-term approach that the times call for. It is the type of program that provides the security to adapt to change.

The ITA addresses an important facet of the job problem. Other initiatives are needed to address the problem on a broad front. There are other very fine bills that my colleagues have introduced that we will also be discussing today.

Thus, we face this critical need to develop innovative programs for retraining. We need to examine the problem.

I would really be remiss if I did not thank the staff of the Northeast-Midwest Coalition as well as the staff of this subcommittee and my own staff for the excellent work they have done.

I want to pay special recognition to my colleagues on the other side of the aisle, Nancy Johnson and Bill Clinger. They have also done very, very thoughtful work on this issue, and we are very happy that they are here as well.

[Ms. Oakar's opening statement follows:]

Statement of Congresswoman Mary Rose Oakar

The Subcommittee will come to order.

The House Banking Economic Stabilization Subcommittee is holding hearings today on an issue critical to our nation's ability to remain competitive -- job retraining. I asked for this hearing because of the importance of examining the linkage between industrial competitiveness and retraining.

The Economic Stabilization Subcommittee has held extensive hearings over the past year on how to make American industry competitive at home and abroad. I want today to explore innovative approaches to job retraining that will allow our nation's workers to contribute fully to this effort. I would like to give special thanks to Chairman LaFalce for the opportunity to examine this issue.

Retraining and industrial competitiveness go hand-in-hand. To remain competitive, American businesses must utilize state-of-the-art equipment and production methods. At the same time, American workers must be able to adapt to the new equipment and production techniques. This places great burdens and responsibilities on business and labor. New approaches are required to assist both business and labor and our nation as a whole.

The issues we are addressing today are of great concern to the Northeast-Midwest Congressional Coalition and, in particular, to its Task Force on Employment and Training which I co-chair with Rep. Sherwood Boehlert of New York.

The Coalition, whose members represent our nation's industrial

HEARTLAND, HAS DEVOTED THE PAST YEAR AND A HALF TO EXAMINING THE CHANGES IN AMERICAN INDUSTRY AND THE AMERICAN WORKPLACE AND WAYS TO PREPARE OUR COUNTRY AND OUR REGION FOR THE FUTURE. LAST YEAR, IT HELD HEARINGS IN SEVEN CITIES ON VARIOUS ASPECTS OF THIS PROBLEM. THE COALITION THEN CONVENED A NATIONAL CONFERENCE LAST OCTOBER ON SHAPING THE WORKFORCE OF THE FUTURE. FOLLOWING THE CONFERENCE, IT ESTABLISHED THE TASK FORCE ON EMPLOYMENT AND TRAINING TO DEVELOP AND WORK FOR THE ADOPTION OF THE EMPLOYMENT AND TRAINING AGENDA FOR THE NEXT SEVERAL YEARS.

THE GOAL OF ALL OF US TODAY IS TO EASE THE ADJUSTMENT OF BUSINESS AND LABOR TO THE PROFOUND TRANSFORMATION THE AMERICAN ECONOMY IS UNDERGOING. OLD MAINSTAY INDUSTRIES ARE SHRINKING AND ADOPTING NEW PRODUCTION METHODS. NEW INDUSTRIES ARE EMERGING WHICH REQUIRE NEW SKILLS. THESE CHANGES ARE PLACING GREAT DEMANDS ON AMERICAN WORKERS. WE SEE THESE CHANGES IN THE SCALING BACK OF THE STEEL AND AUTOMOBILE INDUSTRIES, IN THE INCREASED USE OF ROBOTS AND COMPUTERS IN THOSE OLD INDUSTRIES, IN THE GROWTH OF HIGH TECHNOLOGY INDUSTRIES, AND IN THE GREAT EXPANSION OF JOBS IN THE SERVICE SECTOR OF OUR ECONOMY.

THESE CHANGES HAVE BEEN OCCURRING AT A TIME WHEN THE U.S. ECONOMY HAS EXPERIENCED ITS WORST RECESSION IN OVER 40 YEARS. WHILE THE ECONOMY HAS BEEN RECOVERING, THE RECOVERY HAS BEEN STRONGER IN SOME REGIONS THAN IN OTHERS.

IN MY HOME STATE OF OHIO, FOR EXAMPLE, RECOVERY HAS LAGGED AND THE UNEMPLOYMENT RATE IS STILL HIGHER THAN THE NATIONAL RATE.

THIS LAG IS ALSO SEEN IN OTHER MIDWESTERN STATES. THUS, FOR THE MIDWEST, JOBS REMAIN AS CRITICAL AN ISSUE AS TRAINING.

JOBS AND TRAINING CANNOT BE SEPARATED. MANY OF THE NEW JOBS BEING CREATED TODAY REQUIRE NEW SKILLS. THESE NEW SKILLS CAN ONLY BE ACQUIRED THROUGH TRAINING. JOB CREATION AND RETRAINING ARE THE KEYS TO REBUILDING THE U.S. ECONOMY. IF ENOUGH GOOD JOBS CAN BE CREATED IN A TIMELY MANNER AND IF AMERICAN WORKERS CAN BE PREPARED FOR THOSE JOBS, THEN WE CAN MAKE THE ECONOMIC CHANGES THAT WE MUST WITH SPEED, GRACE AND CONFIDENCE.

TODAY'S HEARING WILL EXAMINE THE ACTIONS THAT WILL BE NECESSARY TO INSURE THAT AMERICAN WORKERS ARE EQUIPPED WITH APPROPRIATE SKILLS.

OUR REGION AND OUR NATION MUST ASSURE THAT THEY ARE NEVER CAUGHT SHORT AGAIN. A RECENT REPORT BY CLEVELAND'S AMERITRUST CORPORATION ON THE MIDWEST'S ECONOMIC OUTLOOK PUT ITS FINGER ON OUR MOST CRITICAL NEED -- KEEPING OUR WORKERS UP-TO-DATE.

AS THE ECONOMIC STABILIZATION SUBCOMMITTEE CONSIDERS THE JOBS AND TRAINING ISSUE, IT MUST REMEMBER THAT WORKERS WILL HAVE SEVERAL JOBS THROUGHOUT THEIR LIFETIME. TRAINING AND RETRAINING ARE THUS ESSENTIAL AND GO HAND-IN-HAND WITH JOB CREATION. WE NEED CONCRETE, WELL-THOUGHT-OUT PROGRAMS TO GIVE WORKERS THE MEANS TO GET THIS RETRAINING. THESE PROGRAMS MUST PROVIDE WORKERS WITH THE SECURITY TO ADAPT TO CHANGE. THEY MUST ALSO ASSURE THAT OUR WORKERS WILL NO LONGER FIND THE FUTURE FRIGHTENING.

I HAVE FIRST-HAND EXPERIENCE WITH THIS PROBLEM. I HAVE VISITED, ALONG WITH MY COLLEAGUES ON THE COALITION TASK FORCE, FACTORIES AND TRAINING FACILITIES AND HAVE MET WITH PEOPLE ON

THE FRONTLINE OF JOB TRAINING. IN GREATER CLEVELAND, I VISITED THE POLARIS JOINT VOCATIONAL CENTER, ONE OF OHIO'S OUTSTANDING VOCATIONAL TRAINING FACILITIES. I SPOKE WITH MANY UNEMPLOYED WORKERS WHO WERE UNABLE TO RECEIVE NEEDED RETRAINING SIMPLY BECAUSE THEY COULD NOT AFFORD THE $1,000 TUITION.

THE VISIT CONVINCED ME OF THE NEED FOR PROGRAMS AND INITIATIVES THAT WILL MAKE SURE THAT WORKERS WILL BE ABLE TO RECEIVE THE TRAINING TO ALLOW THEM TO GET THE NEW SKILLS THAT THEIR JOBS WILL REQUIRE.

ONE PROGRAM IS THE NATIONAL INDIVIDUAL TRAINING ACCOUNT ACT OF 1984 (H.R. 4832) WHICH TWO OF MY COLLEAGUES, DICK DURBIN AND SHERRY BOEHLERT, WILL DISCUSS TODAY. THE BILL WAS INTRODUCED EARLIER THIS YEAR BY THE NORTHEAST-MIDWEST CONGRESSIONAL COALITION AND ITS TASK FORCE ON EMPLOYMENT AND TRAINING. THIS BILL WOULD ALLOW WORKERS TO SET UP A SAVINGS ACCOUNT TO PAY FOR NEEDED RETRAINING. IT IS THE TYPE OF INNOVATIVE, RESULT-ORIENTED PROGRAM THAT WILL MAKE RETRAINING AVAILABLE TO WORKERS. IT IS THE TYPE OF COOPERATIVE, LONG-TERM APPROACH THAT THE TIMES CALL FOR. IT IS THE TYPE OF PROGRAM THAT PROVIDES THE SECURITY TO ADAPT TO CHANGE.

THE ITA ADDRESSES AN IMPORTANT FACET OF THE JOB PROBLEM. OTHER INITIATIVES ARE NEEDED TO ADDRESS THE PROBLEM ON A BROAD FRONT. ONE WOULD BE THE CREATION OF A TRULY NATIONAL JOBS BANK THAT WOULD HELP WORKERS FIND JOBS. THIS BANK SHOULD BE USED BY THE BUSINESS COMMUNITY AND HAVE ALL TYPES OF JOBS INCLUDED.

THE PROBLEM WE FACE TODAY IS THAT ONLY 21 STATES HAVE AUTOMATED

JOBS BANKS AND THAT THERE IS NO STANDARDIZED METHOD OF IDENTIFYING NEW OCCUPATIONS OR ELIMINATING OBSOLETE ONES. MOREOVER, THERE IS NO METHOD FOR ANTICIPATING CHANGING LABOR NEEDS WITHIN AND BETWEEN INDUSTRIES.

WE NEED TO IMPROVE THE PUBLIC'S VIEW OF THE EMPLOYMENT SERVICE AND ENCOURAGE JOBSEEKERS AND EMPLOYERS TO USE ITS SERVICES. MOREOVER, WE NEED TO ENSURE STEADY FUNDING FOR THE PROGRAM AND WORK TOWARDS AN ON-LINE COMPUTER SYSTEM THAT WOULD LINK TERMINALS IN STATE AND LOCAL AGENCIES TO A NATIONAL COMPUTER, THUS PROVIDING INSTANTANEOUS INFORMATION ON ALL JOB OPENINGS.

WE NEED TO EXAMINE HOW TO REMOVE OBSTACLES IN THE UNEMPLOYMENT INSURANCE SYSTEM TO WORKERS RECEIVING TRAINING. TODAY, MANY STATES PROHIBIT OR MAKE IT VERY DIFFICULT FOR DISPLACED WORKERS TO PARTICIPATE IN TRAINING PROGRAMS AT THE SAME TIME THEY ARE RECEIVING UNEMPLOYMENT BENEFITS. THIS IS COUNTER-PRODUCTIVE. UNEMPLOYMENT INSURANCE SHOULD NOT BE A BARRIER TO AN INDIVIDUAL GETTING RETRAINING THAT WILL GIVE HIM OR HER A NEW JOB WITH A FUTURE.

MANY DISPLACED WORKERS NEED RETRAINING TO BE COMPETENT IN NEWLY CREATED JOBS OR MORE TRADITIONAL JOBS WHICH HAVE INCORPORATED NEW TECHNOLOGIES. YET MOST OF THE UNEMPLOYED, MANY WITH FAMILIES TO FEED AND MORTGAGES TO PAY, CANNOT AFFORD TO FORGO UNEMPLOYMENT INSURANCE IN ORDER TO GET RETRAINING. OUR GOAL MUST BE TO DO EVERYTHING POSSIBLE TO GET PEOPLE PERMANENTLY BACK TO WORK.

IT IS IMPORTANT THAT BUSINESS, LABOR AND CONGRESS WORK TOGETHER TO DEVELOP NEW APPROACHES TO JOB TRAINING AND HELPING DISPLACED WORKERS FIND NEW JOBS. THE COALITION'S TASK FORCE ON EMPLOYMENT AND TRAINING RECOGNIZES THAT WE ARE BREAKING NEW GROUND WITH THE ITA BILL AND OTHER INITIATIVES. WE RECOGNIZE THAT A CONSENSUS IS NEEDED TO ALLOW LABOR, BUSINESS AND CONGRESS TO MOVE FORWARD WITH THESE NEW APPROACHES.

TO FORGE THIS CONSENSUS, MEMBERS OF THE TASK FORCE AND I HAVE HELD INITIAL MEETINGS WITH BUSINESS AND LABOR TO GET THEIR SUGGESTIONS AND VIEWS. WE LOOK FORWARD TO FUTURE MEETINGS.

OUR WITNESSES THIS MORNING WILL DISCUSS THE ISSUE OF RETRAINING FROM SEVERAL PERSPECTIVES AND THE NEW APPROACHES THAT ARE REQUIRED TO MAKE RETRAINING AN INTEGRAL PART OF THE EFFORT TO ACHIEVE INDUSTRIAL COMPETITIVENESS.

Ms. OAKAR. So without further ado, I would like to ask Mr. Shumway, the ranking minority member, if he has an opening statement.

Mr. SHUMWAY. Thank you, Madam Chairman. I would like to join you today in welcoming the distinguished panel of witnesses whose testimony, I am sure, will prove to be very helpful to the subject of the displaced worker and our economic system and the appropriate role of the private and public sectors in equipping its citizens with the replacement skills they need to work productively within our economy.

I think we all agree there is a subject of great concern to us. We have had many hearings and debates in this subcommittee and elsewhere on the subject of competitiveness, industrial policy, and generally the change in the work force in America today.

While we focus on these subjects, I think it is going to be important for us to try to strike some balance that will keep our economic recovery alive, and yet make the most productive use of our Nation's capital and our Nation's physical industrial structure and its work force.

No doubt the debate will continue as to the Federal role in and the most effective means by which to encourage the physical modernization and competitiveness of our industries.

But I believe there is universal agreement on the need to better educate and train the industrial work force, particularly the displaced worker and the worker whose job may give way to the advances of technology.

However, from the profusion of proposals that have been offered and that will continue to be suggested in this regard, the task of the Congress will be to identify those which offer real hope at an acceptable price of meeting identifiable needs.

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Further, it seems to me any initiatives in the areas of re-education and retraining must out of marketplace realities involve private sector commitment. Without industry involved in this process, by both business and the work force, our economy cannot and will not be able to meet head on the forces dictated by market demands.

Madam Chairman, I ask unanimous consent to present my entire statement in the record and to revise and extend my remarks.

Ms. OAKAR. Without objection. Thank you very much.

[The full text of Mr. Shumway's opening statement follows:]

Statement of the Honorable Norman D. Shumway

July 31, 1984

Madam Chairman, Members of the Subcommittee: I would like to join you today in welcoming our distinguished panel of witnesses whose testimony, I am sure, will prove to be illuminating on the subjects of the displaced worker in our economic system, and the appropriate role of the private and public sectors in equipping its citizens with the replacement skills they need to work productively within our economy. I think we can all agree that this is a subject of great concern to us. Yet, must also recognize that it is inextricably linked to and the result of the dynamic forces which have caused our nation's economy to develop, grow and ultimately, to change.

Members of this Subcommittee are all too aware of the current public policy debate on U.S. industrial competitiveness, U.S. economic policy alternatives, and on proposals for a specifically defined U.S. industrial policy. While the outcome of that debate has not been reached, I do know that other factors, such as high federal budget deficits, together with high interest rates, are endangering the future growth of this nation's economy, undermining the ability of American industry to compete in world markets, and exacerbating the adjustment ot necessary structural changes in our economy.

Having paid the price for wringing a stubborn inflation of 15 years in the making out of our economy, we must now walk a very fine line to sustain the ongoing economic recovery in a vigorous and stable fashion to allow us to address our major structural problems, while not being so bouyant as to risk a resurgence of inflation. Perhaps the most critical issue emerging in the context of this debate is how our nation's economy can absorb and successfully adjust to change, within both our production and human resources. We have already made the successful transition from an economy and workforce based on agriculture to an economic structure based on manufacturing. Today, we are undergoing another structural adjustment in the composition of American industry as U.S. investment shifts from the traditional manufacturing sectors to new types of high-technology and services industries. This structural adjustment reflects an ongoing process in modern market economies; that is, the need to respond to market signals as well as to invest in areas of stable return, and to do so in the most efficient and competitive manner.

The dilemma posed by -- and the cost of -- structural adjustment of our economic system, is the change in the job/skill mix of our work-force and the resulting displacement of workers whose existing jobs are not obsolete and whose skills are inadequate to fill new jobs available in the market.

Sustaining a sound economic system which will continue to be competitive will, in my mind, entail capital investment to modernize and make productive not only our nation's physical industrial structure but also its workforce. While the debate will continue as to the federal role in and the most effective means by which to encourage the physical modernization and competitiveness of our industries, I believe there is universal agreement on the need to better educate and train the industrial workforce, particularly the displaced worker and the worker whose job may give way to the advances of technology. However, from the profusion of proposals that have been offered and that will continue to be suggested in this regard, the task of the Congress will be to identify those which offer real hope at an acceptable price of meeting identifiable needs. Further, any initiatives in the area of reeducation and retraining must, out of marketplace realities, involve private sector commitment. Without industry involvement in this process -- by both business and the workforce -- our economy cannot and will not be able to meet head-on the forces dictated by market demands.

Ms. OAKAR. Mr. Coyne.
Mr. COYNE. I have no statement.
Ms. OAKAR. Mr. Wortley.
Mr. WORTLEY. I have no statement at this time.
Ms. OAKAR. Mr. Torres.
Mr. TORRES. No statement, Madam Chairman.
Ms. OAKAR. Thank you.

Our first witnesses are our colleagues. I am convinced that if we are ever going to get anything done in the area of training and retraining or new approaches, it has to be done on a bipartian basis.

So I am very happy to have here today Representatives Dick Durbin, Sherwood Boehlert, Nancy Johnson, and William Clinger. If they would please come up.

I would like to yield to Mr. Wortley.

Mr. WORTLEY. Thank you, Madam Chairman.

I would like to welcome my very distinguished colleague, Sherwood Boehlert, a gentleman with whom I share many common interests. We have common boundary lines.

Sherry is a very able, articulate, creative and effective Member of the House of Representatives. We welcome you here this morning and look forward to your testimony.

Mr. BOEHLERT. Thank you very much.

Ms. OAKAR. Thank you very much.

Dick, if you would like to begin, as the major sponsor of one of the bills.

STATEMENT OF HON. RICHARD J. DURBIN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. DURBIN. Thank you very much. I want to thank you as a colleague who has worked very hard on this concept and dutifully to make certain that we have increased the number of sponsors to the point now where there are 75 cosponsors of H.R. 4832, the National Individual Training Account Act.

I might add, as has been noted earlier, this is a true bipartisan effort. I think that is the real strength behind it.

I should start any statement in relation to the Individual Training Account by paying homage to Pat Choate, who sits behind me, who was the inspiration for this concept and, frankly, got me started thinking as to how we might implement it and make it a worthwhile program.

And then, of course, I believe credit must be given to the Northeast-Midwest Coalition, which provided both resources, energy and the kind of input that has been absolutely essential for developing this legislation.

What has been interesting is what might have started out as a Midwestern idea or an Eastern idea based on some of our economic problems has now attracted cosponsorsorship from across the Nation. Because no matter what part of the country you might live in or the state of your economy, everyone is going to face to some degree this very problem and have to grapple with it.

I want to thank you for this hearing today. I believe for many people it will be their first opportunity to hear about the Individual Training Account.

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I have a statement to submit for the record, and I would like to summarize some of the major points this morning.

Although we are experiencing an economic recovery in some parts of the country, we are now seeing that this mass historic shift in the structure of our economy, and the decline of employment in basic industries such as steel, the rise of new industries, and the movements of firms to overseas locations, the penetration of U.S. markets by foreign companies are the most visible signs of these changes.

These economic shifts are irreversible. No Government policy can spare American workers and industries from the need to adapt to new realities.

However, we can make the adaptation less painful than it is now. Worker displacement is high in many regions of the country, making some kind of adjustment assistance a necessity.

As we look back in current memory in this century, possibly the most successful program which we have had in our Nation's history in retraining workers and preparing them for new opportunities was the GI bill of rights.

As I travel across my district, some 99 town meetings I have had, and talk about the GI bill of rights, without exception, someone will nod their head in the audience, yes, they went to school because of the GI bill of rights or their father did.

It touched so many people in a very positive way. We have to ask ourselves whether or not our commitment to the GI bill after World War II is being matched today, in our commitment to training and retraining workers.

I cannot really say there is an objective criteria that is necessarily going to indicate whether we are meeting this need. But there is one statistic I would like to share with you.

The GI bill in 1949, the peak year of that program, called for spending $2.7 billion—1 percent of our gross national product was used for upgrading our work force, primarily the returning veteran. In 1984, we are spending, in the sum total of our training program for people, to get them back to work, give them a chance, a total of about $4 to $5 billion.

If we were spending the same 1 percent of the gross national product that we spent on the GI bill in 1949, we would have to spend $30 billion today. The amount of money we are spending as a nation for everyone's problems in comparison to the GI bill is only one-sixth or one-seventh of the commitment we made in 1949 in relative comparison statistics.

This program, I think, is important for several reasons. I think it is realistic.

Any of us could devise a program that would call for massive Federal spending to meet a massive problem. But the point is with the deficit of $200 billion that is a waste of time.

It is not going to be passed or enacted or signed by the President of either political party. The Individual Training Account takes a much different approach.

It says that we are going to combine personal initiative and limited Government involvement, and we are going to try to bring these two together to make a program that is physically respon-

sive. It is up to the individual employee to make the decision to get into the program.

It is a personal initiative thing. But I think it is important that we start communicating to the people who are displaced today as well as our kids who are in high school that your education just doesn't end when you are handed that diploma and get your first job.

For every single one of us the needs, the skills of tomorrow are going to require more training. We can get that point across with this approach.

Second, there is limited government involvement. Much like the GI bill, the Federal Government has a limited role, it collects the money and invests it conservatively, approves the educational institutions and makes certain there is no fraud.

Beyond that, there is no massive Federal commitment. A very small percentage of an employee's contributions to the ITA goes on to help defray the administrative costs. There are a couple of other things important about this program but are not obvious as you look at it the first time.

One thing it is going to do is increase personal savings in this country, because workers are going to take money that they otherwise might spend and put it into a savings capacity.

That creates capital growth, something our country needs a great deal of. It will put use on the road perhaps of increasing that capital pool so that we can increase our own investment in this country and our own economic growth.

And finally, I predict something else is going to happen if we move toward Individual Training Account. I think we are going to see a healthier degree of competition among educational institutions.

In my area, we have community colleges that are excellent, proprietary schools that are very good, colleges, high schools. Imagine, if you will, 10 years from now, the Individual Training Account is in place, we have a pool of millions of American workers who have $4,000 to spend on their training and retraining, and they start to shop around. They go to the community college and sit down with the counselor, before they sign up for the courses, and they ask a basic question—what is your success rate, how many people like myself have gone through your community college and gotten a job.

At that point the educational institution really has to be competitive. The people and the places that are taking people in and training them for dead-end positions, things with no future, are going to be found out.

Instead, we are going to have a higher degree of competition in our society so that we will have some success. You have seen it in your own area, I am sure, Madam Chairman, in some of the programs that have been very successful.

This competition is something we need more of, and this program will move us in that direction. If we were smack dab in the middle of a recession today, about 12-, 13-, 14-percent national unemployment, we would need a much larger hall for this hearing, there would be television cameras banked along one side, and

people would be just sitting there waiting for every word from this august panel.

But unfortunately today, in one respect, the economic recovery we have seen, the downturn in the unemployment rate has taken attention away from this issue for the short term.

It is up to us in a leadership position in Congress to really look to the long term and where we are going. You don't start putting a roof on your house when the rain starts to fall. You prepare ahead of time.

And I think the Individual Training Account which we will discuss today will move us in that direction.

I thank you very much for this hearing.

Ms. OAKAR. Thank you very much.

[Mr. Durbin's prepared statement follows:]

Testimony before the Economic Stabilization Subcommittee

Richard J. Durbin - July 31, 1984

I thank the members of the Subcommittee for the opportunity to testify here today on a piece of legislation I have introduced with my colleague, Sherry Bochlert, and with the assistance of the Northeast/Midwest Congressional Coalition. I believe this legislation will go a long way toward meeting the needs of a growing segment of our unemployed -- those workers displaced from their jobs because of economic change.

That bill is H.R. 4832, the National Individual Training Account Act, which now has 75 co-sponsors. It has been referred to the Ways and Means Committee and to the Employment Opportunities Subcommittee of the Education and Labor Committee, where a hearing has been scheduled on the bill on September 18.

The strong economic recovery we are now experiencing masks an historic shift in the structure of our economy. Decline of employment in basic industries such as steel, the rise of new industries, the movement of firms to overseas locations, and the penetration of U.S. markets by foreign companies are only the most visible signs of these changes.

These economic shifts are irreversible. No government policy can spare American workers and industries from the need to adapt to new realities. However, they can make that adaption less painful than it is now. Worker displacement is high in many regions of the country, making some kind of adjustment assistance a necessity.

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The system we propose to address this situation establishes individual training accounts as funds attached to specific workers that can be used to pay for their retraining. Under this voluntary system, both workers and employers must agree to set up an ITA. They each then make tax deductible contributions to the fund until it reaches $4,000.

If workers are laid off at any time, they can use these contributions, plus accumulated interest, to pay for retraining. In doing so, they can acquire new skills that will allow them to adjust to the changing needs of the job market. If they are never laid off, they can draw on their contribution plus interest when they retire, as with an IRA. Employers are also refunded their contributions, along with accumulated interest, if workers never use their ITA's for retraining.

Congress took a major step toward recognizing the problems of displaced workers in passing the Job Training Partnership Act of 1982. Title III of that Act provides direct federal and state assistance for the retraining of displaced workers.

While the JTPA is clearly a step in the right direction, an inherent weakness in this or any other program requiring direct appropriations is the adequacy of funding. With federal deficits in the range of $200 billion in the foreseeable future, the JTPA's Title III funds will be insufficient to meet the needs of all, or even a large share of displaced workers. To shift funds within the total JTPA funding over to Title III means taking money away

from other titles which benefit disadvantaged workers; to get additional appropriations in this deficit-conscious era will clearly be very difficult.

Along with the JTPA, there have been many smaller, less comprehensive training programs established in the private sector. However, all of these programs together do not make up the scale of investment in the retraining and upgrading of our workforce required to meet the needs of dislocated workers.

It is worth comparing the current level of federal spending on training of our workforce relative to what we spent on the GI bill in the post World War II years. The GI bill is widely acknowledged as having contributed substantially to the boom in our economic productivity in the 1950's and 1960's. In 1949, the peak year of the GI bill, we spent $2.7 billion, or one percent of our GNP, on the upgrading of our workforce. In 1984, we are spending between $4 and $5 billion. A comparable level of investment in our workforce today would require an expenditure of $30 billion.

The ITA system we propose would complement the JTPA in providing retraining for displaced workers. However, one of its major strengths is that it is not reliant on federal appropriations since it is funded through employer and employee contributions.

Besides its independent source of funding, the ITA system offers three other major strengths. It is based on a combination of personal initiative, limited government involvement, and the individual choice included in the time-tested GI bill approach.

The individual choice component of the GI bill proved to be very successful when the Bill was initiated in the years after World War II. The GI bill not only provided access to education and training for millions of veterans, but it also gave them much freedom in choosing the type of program they wished to participate in. The ITA system we propose relies on that same model of individual choice. Once a worker has set up an ITA and contributed to it for at least a year, he or she is eligible to receive up to $4,000 in the form of a voucher to receive retraining at the institution of his or her choice.

This ITA system based on individual choice will introduce competition into the market of retraining institutions as the GI bill did in the general educational community. This is true not only because more workers will have retraining funds available to them, but also because they will have contributed half the money themselves. They are likely to make certain that the programs they choose to attend will actually provide the training they need.

The government's role under an ITA system would be more limited than under previous training programs. The federal government would certify training programs through accredited institutions, hold ITA funds in a separate trust fund, and finance tax-deductible employer and worker contributions.

This type of government involvement is appropriate because it has worked before, as in the GI bill, and because a much greater role is no longer desirable in today's deficit-conscious economy. On the other hand, however, the federal government should play a role in

the retraining of workers, so the entire responsibility does not fall on the private sector -- or fall through the cracks.

Our proposed ITA system also relies heavily on workers' personal initiative. They must decide to set up an ITA, to contribute to it while employed, and then how to use it if they are laid off. However, the system also affords workers a great deal of freedom, beginning with the decision on whether to establish an ITA. It also encourages them to view retraining as a necessity in their future.

Along with this element of personal initiative, our proposal also provides workers with some direction. Workers are required to receive job counselling from upgraded state employment services before using their ITA's. This provision will not guarantee them a job, but it will allow them to make a far more informed choice about the type of retraining they should seek.

I would urge the Subcommittee to give serious consideration to the National Individual Training Account Act as an important step in meeting displaced workers' needs.

Without the adjustment assistance provided in ITA's, our economy will continue to bear the costs of long term unemployment of displaced workers. The ITA system we propose would go a long way toward making that transition. It represents an important tool to help today's workers prepare for tomorrow's jobs.

Ms. OAKAR. Mr. Boehlert.

STATEMENT OF HON. SHERWOOD L. BOEHLERT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. BOEHLERT. Thank you. I would like to thank the chairman for holding these hearings, because I think it is very important we focus attention on the continuing problem of unemployment. That is greatly needed now, in this period of booming economic recovery.

There is a danger that the recent flood of good economic news will sweep the problem of unemployment from our minds as it has swept it from the front page. That can't be allowed to happen.

Yes, the economy is generally healthy. The GNP is leaping upward, inflation is fantastically low, more Americans are working than ever before in history—105 million. But we can't rest on our laurels when 7 percent of our citizens still can't find work. We can't ignore the enormous social and personal cost that entails.

Moreover, we cannot allow this flood of buoyant reports to obscure the significant, and perhaps foreboding, structural changes going on beneath the surface functioning of our economy.

We have a whole new category of unemployed Americans—the displaced workers. There may be as many as 3 million of these workers—people who have been laid off and are unlikely ever to get their jobs back because their skills have become obsolete.

Technological change in the coming years is likely only to make the problem of displacement more prevalent. But this problem is not insoluble, if we act now.

We must act now when the economy is healthy; we must break the pattern of muddling along from crisis to crisis. If we fail to act, we will face the same crisis in 1992 that we faced in 1982.

The National Individual Training Account Act of 1984, which Congressman Durbin and I introduced in February, is designed to prevent that. It attacks the problem of displaced workers head-on.

It does not try to prevent or even to slow economic change. Instead, H.R. 4832 sets up a coherent, forward-looking policy to ensure that workers will be able to cope with whatever change the future brings.

And our bill would accomplish that by promoting, not stifling, individual initiative and private sector involvement in job training. In addition to its more tangible benefits, our Individual Training Account proposal should create a new psychology, an atmosphere in which employers and employees will be aware of the rapid pace of economic change and the need to be looking forward constantly to remain productive.

The Individual Training Account bill is based on a single, basic concept: training is the key to keeping our economy healthy in the future. The bill then builds on that idea by creating tax incentives to promote training.

The foundation and details of this bill were not developed in a haphazard fashion. The bill is the product of hearings the Northeast-Midwest Congressional Coalition Task Force on Employment and Training, which Congresswoman Oakar and I chair, held around the country.

Those hearings convinced us that Individual Training Accounts are not just a novel, abstract concept, but would make a real difference in the future of our economy and in the future of individual workers.

I can see that in my own congressional district. I received a letter recently from a woman in Cortland County in my district, whose husband had been laid off from his job as a machinist from Smith-Corona. The company has laid off hundreds of workers and has closed a plant because of foreign competition, changing technology and changing consumer tastes.

The woman wrote:

> Fortunately, he was able to find new work. However, his salary is about 60 percent of his income at SCM and the company he now works for has a history of frequent layoffs.
>
> A retraining fund would have allowed him the opportunity to change fields, thus increasing his employment security. Currently, there is not enough money left in our budget to allow him to utilize any of the retraining programs locally available.

That is the end of her story. But it is a story repeated tens of thousands of times across this country.

This man's story is hardly unique—in my District or in the Nation at large. And it will have an ever more familiar ring in the years ahead.

I hope today's hearing will lead the committee to the same conclusion that I and the 74 other cosponsors of H.R. 4832 have arrived at: that we can stave off a growing problem and help American workers by allowing them to open Individual Training Accounts.

I might say I have tested this idea in the market place. I have talked to some of my employers, I have outlined the concept to them.

They like it. They are in the marketplace. I think they are willing to buy. Let's give them the product they can buy.

Thank you for giving me this opportunity.

Ms. OAKAR. Thank you very much.

[Mr. Boehlert's prepared statement follows:]

TESTIMONY

Congressman Sherwood Boehlert
to the
House Subcommittee on Economic Stabilization

July 31, 1984

I'd like to thank the Committee for holding this hearing and for inviting me to testify.

This hearing should serve at least one essential function: it should focus attention on the continuing problem of unemployment. That is greatly needed now, in this period of booming economic recovery.

There is a danger that the recent flood of good economic news will sweep the problem of unemployment from our minds as it has swept it from the front page. That can't be allowed to happen.

Yes, the economy is generally healthy. The GNP is leaping upward, inflation is fantastically low, more Americans are working than ever before in history. But we can't rest on our laurels when 7 percent of our citizens still can't find work. We can't ignore the enormous social and personal cost that entails.

Moreover, we cannot allow this flood of buoyant reports to obscure the significant, and perhaps foreboding, structural changes going on beneath the surface functioning of our economy.

We have a whole new category of unemployed Americans--the displaced workers. There may be as many as 3 million of these workers--people who have been laid off and are unlikely ever to get their jobs back because their skills have become obsolete.

Technological change in the coming years is likely only to make the problem of displacement more prevalent. But this problem is not insoluble, if we act now.

We must act now when the economy is healthy; we must break the pattern of muddling along from crisis to crisis. If we fail to act, we will face the same crisis in 1992 that we faced in 1982.

The National Individual Training Account Act of 1984, which Congressman Durbin and I introduced in February, is designed to prevent that. It attacks the problem of displaced workers head-on. It does not try to prevent or even to slow economic change. Instead, HR 4832 sets up a coherent, forward-looking policy to ensure that workers will be able to cope with whatever change the future brings.

And our bill would accomplish that by promoting, not stifling, individual initiative and private sector involvement in job training. In addition to its more tangible benefits, our ITA proposal should create a new psychology, an atmosphere in which employers and employees will be aware of the rapid pace of economic change and the need to be looking forward constantly to remain productive.

The ITA bill is based on a single, basic concept: training is the key to keeping our economy healthy in the future. The bill then builds on that idea by creating tax incentives to promote training.

The foundation and details of this bill were not developed in a haphazard fashion. The bill is the product of hearings the Northeast-Midwest Congressional Coalition Task Force on Employment and Training, which Congresswoman Oakar and I chair, held around the country.

Those hearings convinced us that ITAs are not just a novel, abstract concept but would make a real difference in the future of our economy and in the future of individual workers.

I can see that in my own Congressional District. I received a letter recently from a woman in Cortland County in my District, whose husband had been laid off from his job as a machinist from Smith-Corona. The company has laid off hundreds of workers and has closed a plant because of foreign competition, changing technology and changing consumer tastes.

The woman wrote, "Fortunately, he was able to find new work. However, his salary is about 60 percent of his income at SCM and the company he now works for has a history of frequent layoffs. A retraining fund would have allowed him the opportunity to change fields, thus increasing his employment security. Currently, there is not enough money left in our budget to allow him to utilize any of the retraining programs locally available."

This man's story is hardly unique--in my District or in the nation at large. And it will have an ever more familiar ring in the years ahead.

I hope today's hearing will lead the Committee to the same conclusion that I and the 73 other co-sponsors of HR 4832 have arrived at: that we can stave off a growing problem and help American workers by allowing them to open Individual Training Accounts.

Thank you for giving me this opportunity to speak.

Ms. OAKAR. I do want to add that a number of us are supposed to be in two different places at the same time. There is a housing meeting, too, going on. That is why several of my colleagues have to leave to go there. They will come back.

Nancy.

STATEMENT OF HON. NANCY L. JOHNSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CONNECTICUT

Mrs. JOHNSON. Thank you very much, Madam Chairwoman, and thank you very much for convening this hearing. It is a very important subject, and I think that the work you have done and the leadership that you, the Northeast-Midwest Coalition, my colleagues Dick and Sherry and my colleague Bill Clinger have shown, is the kind of leadership we need if the Nation is going to meet the challenge you have all described so vividly.

I am going to move along and skip the introductory parts of my statement except to acknowledge that Bill is chairman of the House Wednesday Group, and in that capacity directed a very important study. I do want to commend the House Wednesday Group on this study entitled "Human Capital and National Economic Development." That study does recognize the creative and very thoughtful work of Pat Choate, which Dick Durbin recognized and I, too, would like to recognize.

I think it is the quality of Pat's kind of thinking and those of others in the private sector that enables government to react with greater relevance and initiative.

In my estimation, what is needed for today's workers in addition to programs that address the specific needs of special groups is a simple, broad-based, ongoing system that will assure investment in training, similar to the investment that we stimulate, reward and assure in capital, equipment, space, as well as research and development. In addition, we need a system that will ensure individually initiated training efforts as a hedge against prolonged unemployment.

The job training mechanisms we support and adopt today must, in the years ahead, be programs that anticipate changes, respond quickly to them, and afford the most relevant training to the broadest possible segment of our population at the least possible cost.

With that criteria in mind I have developed, in cooperation with Bill Clinger, the National Training Incentives Act. It is designed to achieve these objectives.

This legislation would stimulate new incentives for private sector skills training through a 25-percent tax credit that would be applied to employer-paid training expenditures above the company's average training expenditures of the last 5 years.

This training tax credit could be applied to any employer-run on-the-job or classroom training program, any State or federally registered apprenticeship program, any cooperative education or any other program approved by the Secretary of Labor.

This tax credit is much like the existing 25-percent credit for research and development expenditures, and like the R&D credit, includes appropriate carry-back and carry-forward provisions for the

benefit of unprofitable firms and new companies. I think these provisions are particularly crucial in assisting new companies.

The potential benefits of this tax credit cannot be ignored. First, while this tax credit would result in some lost revenue, it is the most efficient mechanism for leveraging job training opportunities.

For every dollar in lost Federal revenue, this credit would generate $4 in private sector training. Further, while our Nation commits nearly $50 billion each year in tax incentives for plant and equipment modernization and research, less than $1 billion is available in incentives for worker training—the human capital investment that is often overlooked.

So we now have an industrial policy, to use a very popular phrase, that clearly biases investment toward plant, equipment, research and development, and almost totally ignores the important investment in human capital which is so essential to our competitive position in the future, domestically and internationally.

Second, this training would be broad-based and ongoing, occurring without specific yearly authorizations or appropriations. This type of training would be for the most part on-the-job training performed by or paid for by private industry, ensuring that the training is conducted by those best equipped to do so and paid for by those who stand to benefit.

I have talked with many companies throughout my district. One of the important aspects of the proposal that I am making is that my little companies out in the middle of nowhere can benefit from it just as much as the larger firms, such as the Stanley Works and United Technologies.

I think that flexibility is very important. Our legislation puts the training dollars precisely at the curve of economic growth and change. It is at the crest of that curve where change is actually happening, where jobs and job potential exists, that our training dollars will be placed.

Fourth, decisions to train workers would be made in response to changing economic conditions or market forces, so that training is proactive, equipping workers with skills needed for the future.

Would a tax credit yield more training? According to a 1983 National Science Foundation report on the R&D credit, "The tax credit has encouraged firms to maintain growth in R&D spending despite the recession." So this type of incentive has worked in an area where we have tried it recently.

The tax credit approach is clearly enormously productive for plant and equipment and space, and I think it is high time this Nation adopted this kind of very broad-based initiative to complement and support other programs we adopt to either address group needs or stimulate individual initiatives.

The second portion of our legislation is designed to stimulate individually initiated training opportunities, and would allow the unemployed or those facing layoff to withdraw without penalty or taxation up to $4,000 to pay for their retraining.

This provision is designed to assist displaced workers and those who believe they will need new skills to secure new employment. This concept is similar to the Individual Training Account, a bill I am also a cosponsor of.

It uses the existing IRA mechanism, and is in a sense a simpler approach.

It does not require a company to contribute as does the Individual Training Account legislation. One of the problems I face in my district is that many of the companies where people are going to need retraining are bearing companies, machine tool companies, and they are in no position to contribute on behalf of their own employees.

So that tandem relationship doesn't have any potential for them. Our bill would allow people to withdraw funds from their IRA's and get the same benefit and create the same ongoing futuristic attitude towards training, education, and investment that we so desparately need to generate.

I think it is important to note that the 1983 figures on IRA investment show that one-half of those starting IRA's made incomes under $25,000. If you assume that people making under $15,000 are not investing in IRA's, half the people investing in IRA's are making between $15,000 and $25,000.

Those are a lot of the people that we really want to get at. This provision enables them to have an individual incentive, combined with a 25-percent employer tax credit, which would open many opportunities and provide a coordinated and, I think, comprehensive approach that would be very useful for our society.

The significance of IRA's for the next decade does lie, as my colleagues have described, in addressing what is a fundamental need in our society, and that is to provide greater stimulus and reward for individuals to look toward the future, to initiate skill change and development in their own lives, through both education, training, and retraining.

The National Training Incentives Act neither proposes nor requires any new complex delivery mechanism, nor does it contemplate any administrative expenses or coordination among Federal, State, and local government. Instead, it puts in place both individual and employer incentives that are used only when it is in the interest of workers and employers to seek training.

Supporters of this bill realize that it will not help everyone. In fact, this legislation is likely to be one of several components in a national training policy and system that will be needed to meet the training challenges of the next decade.

Programs such as the Job Training Partnership Act must be sustained, strengthened, and evaluated in light of the last year's experience with this new program and must be a part of a comprehensive national training policy.

I would like to conclude my statement, again, Congresswoman Oakar, by recognizing your leadership and that of the Northeast-Midwest Coalition represented by my colleagues here, and I think together that we ought to be able in a timely fashion to develop the kind of broad-based and compelling, progressive, effective training initiatives that this Nation at the current time lacks and so desperately needs.

Ms. OAKAR. Thank you very much.

[Mrs. Johnson's prepared statement follows:]

STATEMENT OF NANCY L. JOHNSON

MADAM CHAIRWOMAN, I AM PLEASED TO BE A PART OF THIS HEARING TODAY AND WANT TO COMMEND YOU FOR DIRECTING THE ATTENTION OF THE SUBCOMMITTEE TO THE ISSUES OF JOB DISPLACEMENT AND RETRAINING. THESE ISSUES ARE NOT JUST MATTERS OF WHETHER OR NOT PEOPLE CAN FIND JOBS OR AVOID BEING LAID OFF. IN ADDITION TO THEIR SOCIAL IMPORTANCE, THEY ARE MATTERS WHICH IMPACT OUR NATION'S ECONOMIC PERFORMANCE AND WORLDWIDE COMPETITIVE POSITION. IN FACT, THE DEGREE OF PROSPERITY WE ATTAIN IN THE YEARS AHEAD WILL DEPEND IN LARGE PART ON HOW HIGHLY SKILLED OUR WORKERS ARE AND HOW QUICKLY THEY CAN ADAPT TO CHANGE.

I ALSO WANT TO COMMEND MY COLLEAGUES, DICK DURBIN AND SHELLY BOEHLERT, AND THE NORTHEAST-MIDWEST CONGRESSIONAL COALITION, FOR THEIR LEADERSHIP ON LEGISLATION TO ADDRESS THE RETRAINING NEEDS OF OUR NATION. I AM AN ORIGINAL COSPONSOR OF THEIR BILL, THE INDIVIDUAL TRAINING ACCOUNT ACT, AND WILL ACTIVELY SUPPORT ITS CONSIDERATION IN THE MONTHS AHEAD.

MY FRIEND AND COLLEAGUE, BILL CLINGER, WILL JOIN US LATER THIS MORNING TO OFFER HIS VIEWS ON THE LEGISLATION WE ARE DISCUSSING TODAY. IT WAS UNDER MR. CLINGER'S LEADERSHIP, AS CHAIRMAN OF THE HOUSE WEDNESDAY GROUP, THAT SOME OF THE IDEAS TO BE DISCUSSED TODAY EMERGED IN A WEDNESDAY GROUP SPECIAL REPORT ON AMERICA'S "HUMAN CAPITAL."

IT IS ONLY APPROPRIATE, THEN, THAT CONGRESSMAN CLINGER AND I COME TO YOU TODAY TO TALK ABOUT HUMAN CAPITAL; ABOUT INVESTING IN AMERICAN WORKERS AND CULTIVATING THEIR SKILLS. TODAY WE ASK YOU TO KEEP IN MIND THE CONCEPT OF HUMAN CAPITAL AS WE PRESENT TO YOU A PRO-

POSAL CONGRESSMAN CLINGER AND I HAVE INTRODUCED AS THE NATIONAL TRAINING INCENTIVES ACT.

OUR NATION'S HUMAN CAPITAL HAS BEEN TINKERED WITH OVER TIME BY AN ARRAY OF GOVERNMENT JOB TRAINING PROGRAMS. BUT WE ARE STILL SEEKING SOLUTIONS TODAY TO THE DISPLACED WORKER PROBLEM BECAUSE THE PROGRAMS WE HAVE ENACTED DO NOT RESPOND TO RAPID CHANGE AND DO NOT REACH LARGE NUMBERS. IN ADDITION, PROGRAMS SUCH AS THE JOB TRAINING PARTNERSHIP ACT, HOWEVER USEFUL, REQUIRE ANNUAL AUTHORIZATIONS AND APPROPRIATIONS BY CONGRESS. AMERICAN WORKERS CERTAINLY DESERVE MORE THAN THIS STOP-AND-GO APPROACH.

MANY AMERICANS TODAY FACE THE ANGUISHING POSSIBILITY THAT THEIR SKILLS WILL BECOME OBSOLETE AND THAT PROLONGED MID-LIFE UNEMPLOYMENT WILL DESTROY THEIR HOPES FOR THE FUTURE. ALTHOUGH A STRONGER ECONOMY IS PROVIDING MILLIONS OF NEW JOBS, MANY WORKERS REMAIN DISPLACED FROM THEIR OLD JOBS BECAUSE THEY POSSESS SKILLS NO LONGER IN DEMAND.

MANY PEOPLE IN TOWNS LIKE NEW BRITAIN, BRISTOL, AND TORRINGTON, CONNECTICUT -- TOWNS THAT I REPRESENT -- DISCOVERED DURING THE LAST RECESSION THAT SHIFTS IN THE ECONOMY CAN MEAN MAJOR SUFFERING AND IN SOME CASES A SIGNIFICANT REDIRECTION OF LIFESTYLE AND OCCUPATION. I AM SURE THAT MEMBERS OF THE SUBCOMMITTEE HAVE WITNESSED THESE CONDITIONS IN THE TOWNS THEY REPRESENT AS WELL.

WHAT IS NEEDED FOR TODAY'S WORKERS IS NOT THE PATCHWORK, ON-AND-OFF PROGRAMS OF THE PAST, BUT A SIMPLE, ON-GOING SYSTEM THAT WILL ASSURE INVESTMENT IN TRAINING, COUPLED WITH A SAVINGS PLAN THAT CAN BE USED FOR INDIVIDUALLY-INITIATED RETRAINING AS A HEDGE AGAINST PRO-

LONGED UNEMPLOYMENT. IN ADDITION, THE JOB TRAINING MECHANISMS WE SUPPORT TODAY AND IN THE YEARS AHEAD MUST BE PROGRAMS THAT ANTICIPATE CHANGES, RESPOND QUICKLY TO THEM, AND AFFORD THE MOST RELEVANT TRAINING TO THE BROADEST POSSIBLE SEGMENT OF OUR POPULATION AT THE LEAST POSSIBLE COST.

THE NATIONAL TRAINING INCENTIVES ACT IS DESIGNED TO ACHIEVE THESE OBJECTIVES.

THIS LEGISLATION WOULD STIMULATE NEW INCENTIVES FOR PRIVATE SECTOR SKILLS TRAINING THROUGH A 25% TAX CREDIT THAT WOULD BE APPLIED TO ANY EMPLOYER-PAID TRAINING EXPENSES ABOVE THE COMPANY'S AVERAGE TRAINING EXPENDITURES OF THE LAST FIVE YEARS. THIS TRAINING TAX CREDIT COULD BE APPLIED TO ANY EMPLOYER-RUN ON-THE-JOB OR CLASSROOM TRAINING PROGRAM, ANY STATE OR FEDERALLY REGISTERED APPRENTICESHIP PROGRAM, ANY COOPERATIVE EDUCATION, OR ANY OTHER PROGRAM APPROVED BY THE SECRETARY OF LABOR. THIS TAX CREDIT IS MUCH LIKE THE EXISTING 25% CREDIT FOR RESEARCH AND DEVELOPMENT EXPENDITURES, AND, LIKE THE R&D CREDIT, INCLUDES APPROPRIATL CARRYBACK AND CARRYFORWARD PROVISIONS FOR THE BENEFIT OF UNPROFITABLE FIRMS AND NEW COMPANIES.

THE POTENTIAL BENEFITS OF THIS TAX CREDIT CANNOT BE IGNORED. FIRST, WHILE THIS TAX CREDIT WOULD RESULT IN SOME LOST REVENUE, IT IS THE MOST EFFICIENT MECHANISM FOR LEVERAGING JOB TRAINING OPPORTUNITIES. FOR EVERY DOLLAR IN LOST FEDERAL REVENUE, THIS CREDIT WOULD GENERATE FOUR DOLLARS IN PRIVATE SECTOR TRAINING. FURTHER, WHILE OUR NATION COMMITS NEARLY $50 BILLION EACH YEAR IN TAX INCENTIVES FOR PLANT AND EQUIPMENT MODERNIZATION AND RESEARCH, LESS THAN

$1 BILLION IS AVAILABLE IN INCENTIVES FOR WORKER TRAINING -- THE HUMAN CAPITAL INVESTMENT THAT IS OFTEN OVERLOOKED.

SECOND, THIS TRAINING WOULD BE BROAD-BASED AND ON-GOING, OCCURRING WITHOUT SPECIFIC YEARLY AUTHORIZATIONS OR APPROPRIATIONS. THIRD, THIS TYPE OF TRAINING WOULD BE FOR THE MOST PART ON-THE-JOB TRAINING PERFORMED BY OR PAID FOR BY PRIVATE INDUSTRY, ENSURING THAT THE TRAINING IS CONDUCTED BY THOSE BEST EQUIPPED TO DO SO AND PAID FOR BY THOSE WHO STAND TO BENEFIT.

FOURTH, DECISIONS TO TRAIN WORKERS WOULD BE MADE IN RESPONSE TO CHANGING ECONOMIC CONDITIONS OR MARKET FORCES, SO THAT TRAINING IS PROACTIVE, EQUIPPING WORKERS WITH SKILLS NEEDED FOR THE FUTURE. FINALLY, AS WORKERS ARE TRAINED BY THEIR EMPLOYERS THEY WILL ACQUIRE ADVANCED SKILLS, CARRYING THESE SKILLS FROM ONE JOB TO THE NEXT AND THEREBY BECOMING LESS LIKELY TO EXPERIENCE FUTURE UNEMPLOYMENT.

WOULD A TAX CREDIT YIELD MORE TRAINING? ACCORDING TO A 1983 NATIONAL SCIENCE FOUNDATION REPORT ON THE R&D CREDIT, "THE TAX CREDIT HAS ENCOURAGED FIRMS TO MAINTAIN GROWTH IN R&D SPENDING DESPITE THE RECESSION."

TO ENHANCE TRAINING OPPORTUNITIES FOR THE UNEMPLOYED, THE NATIONAL TRAINING INCENTIVES ACT WOULD PERMIT UNEMPLOYED INDIVIDUALS OR THOSE FACING LAYOFF TO WITHDRAW, WITHOUT INTEREST PENALTY OR TAXATION, UP TO $4,000 TO PAY FOR RETRAINING. THIS PROVISION IS DESIGNED TO ASSIST DISPLACED WORKERS AND THOSE INDIVIDUALS WHO BELIEVE THEY WILL NEED NEW SKILLS TO SECURE EMPLOYMENT.

THE FIRST REACTION OF MANY TO THIS PARTICULAR PROVISION IS THAT ONLY THE RICH HAVE IRAs AND THEREFORE ONLY THE RICH WILL BE AFFECTED BY THIS CHANGE, WHO WOULD NOT NEED TO TAKE ADVANTAGE OF IT ANYWAY. BUT IRS DATA SHOW THAT, OF THE 12 MILLION HOUSEHOLDS WHO CURRENTLY HOLD IRAs, OVER 5 MILLION EARN ANNUAL HOUSEHOLD INCOMES UNDER $30,000, AND OVER 8 MILLION EARN ANNUAL HOUSEHOLD INCOMES OF BETWEEN $15,000 and $50,000. THIS RANGE OF INCOME IS CLEARLY WITHIN THE EARNINGS OF AN AVERAGE AMERICAN FAMILY, AND COULD EASILY REPRESENT VIRTUALLY ANY OCCUPATION, INCLUDING AUTO ASSEMBLY WORKERS, STEELWORKERS, AND OTHER INDIVIDUALS EMPLOYED IN MANUFACTURING AND SERVICES.

OTHERS MAINTAIN THAT THIS PROVISION WOULD VIOLATE THE INTENT OF CONGRESS IN ESTABLISHING IRAs FOR RETIREMENT ONLY; THAT PERMITTING WITHDRAWALS FROM IRAs FOR RETRAINING WOULD OPEN THEM UP FOR OTHER PURPOSES. BUT THIS VIEW IGNORES THE FACT THAT IN MANY CASES A SECURE RETIREMENT WILL DEPEND NOT SO MUCH ON AN IRA BUT ON AN UNINTERRUPTED AND LENGTHY PERIOD OF GAINFUL EMPLOYMENT. RETRAINING IS TODAY AND WILL LIKELY BE IN THE FUTURE CRUCIAL TO SUSTAINING EMPLOYMENT AND REALIZING THE TYPE OF RETIREMENT THAT MANY AMERICANS DESIRE.

THE SIGNIFICANCE OF IRAs FOR THE NEXT DECADE LIES IN THEIR ABILITY TO STIMULATE GREATER INDIVIDUAL INITIATIVE IN PROVIDING FOR ONE'S OWN FINANCIAL SECURITY.

THE NATIONAL TRAINING INCENTIVES ACT NEITHER PROPOSES NOR REQUIRES ANY NEW COMPLEX DELIVERY MECHANISM, NOR DOES IT CONTEMPLATE ANY ADMINISTRATIVE EXPENSES OR COORDINATION AMONG FEDERAL, STATE, AND LOCAL GOVERNMENT. INSTEAD, IT PUTS IN PLACE BOTH INDIVIDUAL

AND EMPLOYER INCENTIVES THAT ARE USED ONLY WHEN IT IS IN THE INTEREST OF WORKERS AND EMPLOYERS TO SEEK RETRAINING.

SUPPORTERS OF THIS BILL REALIZE THAT IT WILL NOT HELP EVERYONE. IN FACT, THIS LEGISLATION IS LIKELY TO BE JUST ONE OF THE SEVERAL COMPONENTS OF OUR NATIONAL TRAINING SYSTEM THAT WILL BE NEEDED TO MEET THE JOB TRAINING CHALLENGES OF THE NEXT DECADE. PROGRAMS SUCH AS THE JOB TRAINING PARTNERSHIP ACT MUST BE SUSTAINED AND STRENGTHENED, AND WE MUST CONSTANTLY BE SEARCHING FOR NEW WAYS TO ENHANCE TRAINING AND EMPLOYMENT OPPORTUNITIES IN THE DECADE OF CHANGE THAT LIES AHEAD.

I WOULD LIKE TO END MY STATEMENT BY SALUTING THE CHAIR, CONGRESSWOMAN OAKAR, AND THE MEMBERS OF THE SUBCOMMITTEE FOR BRINGING THESE ISSUES TO PUBLIC ATTENTION TODAY. CONGRESSMAN CLINGER AND I LOOK FORWARD TO WORKING WITH YOU ON ANY FUTURE CONSIDERATION OF THIS BILL.

Ms. OAKAR. Bill.

STATEMENT OF HON. WILLIAM F. CLINGER, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. CLINGER. Thank you, Mr. Chairman.

I have a prepared statement. I will just summarize briefly. I think my colleague, Mrs. Johnson, has very thoroughly covered the principal components of H.R. 5159. But I might just make a couple of additional comments.

I would also like to second the motion of every member up here of our indebtedness to Pat Choate, who worked on a special report on human capital for the House Wednesday Group, released in July 1983, with 21 members of our group as sponsors.

That really was the genesis for the effort that Nancy Johnson headed to work on this bill. I also would commend my colleagues, Sherry Boehlert and Dick Durbin for the very thoughtful leadership they are providing, and particularly you, Madam Chairman, for calling this hearing.

I think this is an issue which we all agree needs to be concentrated on, needs to be given focus, and as Dick Durbin said, the imperative may not be as great at the moment, but it is going to be.

For example, in the 1980's, the workforce growth rate will be only half as much as in the last decade. As a result, today's workers will constitute over 90 percent of the labor force in 1990.

And also, by 1990, over half of all U.S. workers will be between the ages of 24 and 44, which are the most productive years for workers. This represents a major opportunity to increase productivity if these workers can be adequately trained or retrained.

Briefly, H.R. 5159 is a demand-driven, market-based approach which puts into place Government incentives that are triggered only when businesses and workers decide for themselves to finance additional skills training.

The first prong of the legislation allows displaced workers to finance retraining with money withdrawn, without penalty, from their IRA or annuity accounts. This approach does not call for direct Federal outlays of money, but rather ties into an existing finance system which at the end of 1982 reached over 12 million households, many of which are supported by individuals with annual incomes under $30,000.

The second prong of the legislation is a tax credit to businesses which invest in worker retraining. The training credit would be similar to the existing R&D tax credit, and would permit businesses to deduct from their tax liability 25 percent of training costs above the company's average training costs of the previous 5 years.

So, this is an incentive for additional training, not a reward for what companies have done historically.

This approach recognizes the importance of investing in worker retraining similar to the importance of investing in R&D and plant and equipment.

Moreover, the tax credit will not reward current retraining, but will reward retraining over and above a 5-year average, and could be used by small businesses or unprofitable firms because of its carry-forward and carry-back provisions.

Let me also mention that this bill provides that the participation of displaced workers in an eligible training program will not disqualify these workers from unemployment compensation to which they are otherwise entitled.

At the present time, only 13 States permit a worker to be involved in retraining and still draw unemployment compensation.

Ms. OAKAR. That is really an important point. We just do all the opposite things. We penalize people for getting training while they are unemployed in certain States. It is very important.

Mr. CLINGER. I think there is a need to provide the incentive to start the retraining immediately, rather than wait until the end of the time and then seek retraining.

I think it will accelerate the whole process of getting people back into economically productive roles.

Let me emphasize that this bill is not intended in any way to replace JTPA or other efforts of Congress to assist the disadvantaged, but rather supplements these efforts.

What are the significant merits of H.R. 5159? First, business and workers finance their own retraining, resulting in greater controls on both the appropriateness and quality of the training.

Second, our proposal is flexible because its incentives are not linked to the vicissitudes of the congressional budgeting process.

Last, these incentives will have no cost to the Federal Treasury unless businesses and workers themselves decide to spend more money on retraining, thereby triggering the legislation's tax incentives.

Before I conclude, let me offer a few words about the individual training account legislation, sponsored by my colleagues from Illinois and New York, Mr. Durbin and Mr. Boehlert, and developed

by my good friend and former colleague at the Economic Development Administration, Pat Choate.

As you may or may not know, the House Wednesday Group and the Northeast-Midwest Coalition worked jointly for some time on worker retraining legislation. As you can see, the resulting efforts are somewhat different. I think it important to share with the committee the reasons we abandoned the individual training account approach.

The key issue is whether the ITA will be voluntary or mandatory. A voluntary approach may not cost the Federal Government very much, but will workers and employers, as required by the ITA approach, participate in sufficient numbers to ensure a viable program?

I think not. Saving money for retraining, it seems to me, simply will not have a high enough priority when people decide how to allocate their discretionary income.

That leaves the mandatory approach, which would guarantee participation, but would require a new and expensive Federal payroll tax.

So the problem, as I see it, is that a voluntary ITA probably won't work, and Congress and the American people are not likely to support the mandatory approach. The ITA is a good idea and well-intentioned, but I don't see how we get around these realities.

Further, although H.R. 4832 is described as wholly voluntary, employers who do not participate would continue to be subject to a $14 per employee surcharge to the Federal Unemployment Tax.

Employers would also be subject to a tax penalty of $378 per employee if their States failed to participate in the program.

While both bills have the same objective, and both bills should receive further consideration by this and other committees, I strongly believe that the National Training Incentives Act provides the proper incentive for employees and employers to meet our Nation's retraining needs. H.R. 5159 is not a panacea for the problems faced by displaced workers, but its enactment would be an important first step.

Again, I appreciate the opportunity to testify on this legislation, and look forward to working with the committee as it continues to explore appropriate Federal policy.

[Mr. Clinger's prepared statement follows:]

STATEMENT OF WILLIAM F. CLINGER, JR.

Madam Chairperson, thank you for allowing me to proceed out of order. I will limit my remarks to a few brief observations on H.R. 5159, which I am pleased to report has a bipartisan co-sponsorship list of 36 members.

I would like to compliment you and the Subcommittee for scheduling this hearing today on worker retraining, an issue I am sure we would all agree is of vital importance to our nation. I would also like to compliment Dick Durbin and Shelly Boehlert, and my Wednesday Group colleague, Nancy Johnson, for their important work and leadership on this issue.

As you may know, many of the provisions of H.R. 5159 were orginally developed in a Special Report on Human Capital which was authored by Dr. Pat Choate and released by the House Wednesday Group in July 1983, with 21 members of the Wednesday Group as sponsors.

We are all aware of the need for legislation in this area. In the 1980s the work force growth rate will be only half as much as it was in the last decade. As a result, today's workers will constitute over 90% of the labor force in 1990. Also by 1990, over half of all U.S. workers will be between the ages of 24 and 44 -- the most productive years for workers. This represents a major opportunity to increase productivity if these workers can be adequately trained or retrained.

Briefly, H.R. 5159 is a demand driven, market-based approach, which puts into place government incentives that are triggered only when businesses and workers decide for themselves to finance additional skills training. It builds upon existing systems and resources and links business, government, and individual workers to maximize our human capital investments.

The first prong of the legislation allows displaced workers to finance retraining with money withdrawn, without penalty, from their IRA or annuity accounts. This approach does not call for direct federal outlays of money, but rather ties into an existing finance system which at the end of 1982 reached over 12 million households, many of which are supported by individuals with annual incomes under $30,000.

The second prong of the legislation is a tax credit to businesses which invest in worker retraining. The training credit would be similar to the existing R&D tax credit, and would permit businesses to deduct from their tax liability 25% of training costs above the company's average training costs of the previous five years.

This approach recognizes the importance of investing in worker retraining similar to the importance of investing in R&D and plant and equipment. It differs substantially from a straight-line business expense deduction, which could still be used with the tax credit, but which fails by itself to provide sufficient incentive for business to invest in worker retraining. Moreover, the tax credit will not reward current retraining, but will reward retraining over and above a five-year average, and could be used by small businesses or unprofitable firms because of its carry-forward and carry-back provisions.

For every dollar in lost federal revenues, this approach will generate four dollars in private sector training. It also offsets part of the financial costs to employers when workers trained by a company take their skills to another firm. This should particularly help small businesses.

Let me also mention that this bill provides that the participation of displaced workers in an eligible training program will not disqualify these workers from

unemployment compensation to which they are otherwise entitled. As the Committee knows, only thirteen states at present allow a worker in a retraining program to receive unemployment compensation. What we need, Madam Chairperson, is to provide incentive for workers to seek retraining at the earliest possible time, thereby allowing them to acquire new skills and to depart the unemployment rolls. What we do not need is a system which mandates that people wait until their unemployment has run out before they can develop a new skill.

Let me emphasize that this bill is not intended in any way to replace JTPA or other efforts of Congress to assist the disadvantaged, but rather supplements these efforts. JTPA must be left untouched so that we can accurately determine its effectiveness and its worth. But we are talking about a significant problem in America today which may need more than JTPA.

What are the significant merits of H.R. 5155? First, business and workers finance their own retraining, resulting in greater controls on both the appropriateness and quality of the training. Second, our proposal is flexible, because its incentives are not linked to the vicissitudes of the Congressional budgeting process. Lastly, these incentives will have no cost to the federal Treasury unless businesses and workers themselves decide to spend more money on retraining, thereby triggering the legislation's tax incentives.

Before I conclude, let me offer a few words about the Individual Training Account legislation, sponsored by my colleagues from Illinois and New York, Mr. Durbin and Mr. Boehlert, and developed by my good friend and former colleague at the Economic Development Administration, Pat Choate.

As you may or may not know, the House Wednesday Group and the Northeast-Midwest Coalition worked jointly for some time on worker retraining

legislation. As you can see, the resulting efforts are quite different. I think it important to share with the Committee the reasons we abandoned the Individual Training Account approach.

One issue is whether the ITA will be voluntary or mandatory. A voluntary approach may not cost the Federal government very much, but will workers and employers, as required by the ITA approach, participate in sufficient numbers to ensure a viable program? I think not. Saving money for retraining, it seems to me, simply will not have a high enough priority when people decide how to allocate their discretionary income. That leaves the mandatory approach, which would guarantee participation, but would require a new and expensive federal payroll tax and would, in effect, socialize the cost of retraining for what may, in the end, be a narrow group of people. As this Committee knows, estimates on the numbers of displaced workers vary from just under 100,000 to over two million.

Further, although H.R. 4832 is described as wholly voluntary, employers who do not participate would continue to be subject to a $14 per employee surcharge to the Federal Unemployment Tax. Employers would also be subject to a tax penalty of $378 per employee if their states failed to participate in the program. Moreover, the annual employer-employee ITA payment of $500 per employee is nearly five times greater than the average unemployment tax per employee, and that does not include the tax loss to the federal government that will result from the ITA's tax incentives.

While both bills have the same objective, and both bills should receive further consideration by this and other Committees, I strongly believe that the National Training Incentives Act provides the proper incentives for employees and employers to meet our nation's retraining needs. H.R. 5159 is not a panecea for the problems faced by displaced workers, but its enactment would be an important first step.

Again, I appreciate the opportunity to testify on this legislation, and look forward to working with the Committee as it continues to explore appropriate federal policy.

Ms. OAKAR. Mr. Coyne.

Mr. COYNE. Thank you, Madam Chairman.

I just want to thank you also for holding these hearings on a very important subject to many regions of the country, particularly the Northeast and Midwest—and for the members who come here today to testify.

I have just one question. First of all, I want to say that I am in favor of a totally employer-paid program, one in which the employees would not pay anything at all, so you know where I am coming from to begin with.

What would be wrong with just increasing the percentage of the unemployment compensation payment by a percent across the country to pay for the retraining efforts that each individual State would have to take on?

In other words, if they are paying 0.2 to .021 percent on the first $4,000 of an employee's income, why not just put an additional percentage on that and say that that is designated through the unemployment compensation fund for retraining purposes?

And all the other stipulations of the ITA then could fall into practice.

Mrs. JOHNSON. I see two problems with that. First of all, there are some States, like Connecticut, that are very much in debt, and not only paying their unemployment compensation payment, but also a penalty payment to repay the Federal Government.

And we have a merit system and small employers with good employment records benefit from that, and depend upon it. And any time there is a proposal—when I was in the Senate—to make a change, the impact on the small employer is very, very heavy.

And I am not comfortable with their ability to absorb those costs. Second, if the money goes entirely to the State, then they are responsible for forming and running the training program.

I have not been impressed with the quality of the progams that Government has been able to develop, nor their relevance to future job availability.

I think one of the things we have to look at is making sure that the dollars are right at that curve of change. And one of the things that has impressed me in my work in the District—I have one new company, for instance, that is making a remarkable new kind of insulin pump. They now have five people assembling it, they have built on all new space.

With this kind of tax credit, they can afford to train their work force in a third of the time. That means they can afford to put all 100 employees they are planning to hire on in a much shorter period of time; it increases their employment in that area more rapidly; it gets greater productivity out of their people earlier, and so increases the viability of the company, which has already sunk a number of millions of dollars into this development and not made a dollar yet.

I think what you are looking at is basically all the money going to Government and Government doing the planning of job training development.

I would disagree with you, it has been a successful approach in the past. It is successful to some extent. There are some good programs out there, and should be a component.

But I prefer to use that component personally for the dislocated worker program, for the hard-to-employ people who need, really, a thoughtful and broad input of services.

But I think we need in our society something else that allows the little company out in the hills of my district to train the word processors and be able to withstand their being booed off by the even smaller companies in their town and retrain others.

We need a broader-based training mechanism that is more dynamic and responsive.

Mr. DURBIN. I might say, in echoing what Nancy said, I think there are four points. Politically, I think it would be tough to do. We have increased taxes on employers, Social Security, and unemployment, in my State in particular, in Illinois, it is really considered to be one of the disincentives for new firms to locate.

If we were to have a new tax, there might be some negative aspects. Second, economically, I think increasing tax on a small businessman right at the point he is seeing some economic recovery is counterproductive.

We don't want to be increasing taxes at that level. Third, I think we as a Nation would be richer if we pass the message along, each of us has an individual responsibility here as much as possible to try to bring ourselves out of this, if we give the mechanism the resources to do it.

Finally, there will be people that won't work with it. Perhaps that gets to the point you make. This program won't help everyone. It is going to help a substantial number of people.

But when it comes, for instance, to the graduate of high school, the minority, for example, who has a high unemployment rate, we are going to need special programs. It probably will have a major source of Government funding rather than individual contribution.

The need for that will be there for a long, long time. We think that complements that effort.

Mr. COYNE. How would you distinguish between the very low-income worker who is barely making it, in the $10,000 or $12,000 a year range, and that individual who may be in the bracket of $20,000 to $25,000?

Would they pay an equal amount into the retraining fund?

Mr. DURBIN. They would be paying a percentage of their earnings into the fund. After 1 year contribution to the fund, much like an insurance policy, they would qualify for the full $4,000. So it has a method of funding itself once the program gets rolling.

We realize that the burden is going to be really higher for the person in the lower income category, who spends more of their disposal income.

But we have kept the percentage contribution low enough that it shouldn't be a major burden to them. It really offers to those folks who are on the edge of falling in the unemployment ranks very quickly an opportunity to get out.

Mr. COYNE. I wonder if the sponsors would entertain a graduated system where the lower income workers would pay less of a percentage, or a lesser amount of their pay into the fund.

Mr. DURBIN. Be glad to look at it.

Mr. BOEHLERT. It is eight-tenths of 1 percent, or $250 annually, whichever is less.

Mr. COYNE. Thank you.
Ms. OAKAR. Thank you.
Mr. Torres.

Mr. TORRES. I, too, want to echo the comments of my colleagues in thanking you, Madam Chairman, for conducting these hearings. I think they are very timely, and certainly of great value, the approach of my colleagues in calling forth this type of legislation.

I was an early victim of dislocation when I lost my job at Chrysler sometime in the late sixties. Unfortunately, there were not programs in place at that time that would have taken care of this problem.

I bounced around to different parts of the country. And finally, thank goodness to politics, I ended up with a good job.

Ms. OAKAR. We are lucky to have you.

Mr. TORRES. Thank you. I wanted to ask my colleague, Dick Durbin, exactly where this whole concept came from. I know we are very innovative as Americans in designing these kinds of programs.

Sometimes we take hints from abroad. Scandinavians, West Germans are good at this. I am just wondering, is this strictly something that grew out of your own experiences in your own area, or something you patterned maybe in studying overseas programs?

Mr. DURBIN. The need, of course, is in each of our areas, more so in so many others. But I have to give credit for the concept to Pat Choate. I think he can indicate to you where he brought the idea together from.

But he was, through the Clearinghouse of the Future, let me give them a plug here too—they brought Pat in early last year to speak about where we were going as a Nation in terms of training dislocated workers.

He came forward with their concept. I liked it immediately and started working on legislation. Sherry has made a great contribution to it. But I think Pat, who is the Vice President of TRW, can give you a little historical background.

Mr. TORRES. Good. This is my first experience and opportunity to hear the comments made by my colleagues here on the general program. I am not sure that I am on your list of cosponsors. But I am so impressed as well, I would like to join you.

Mr. DURBIN. Love to have you.

Mr. TORRES. I have no further questions.

Ms. OAKAR. Thank you very much.

I would just like to make a comment.

First of all, I was glad, Bill, to hear you say these kinds of bills in no way compete with State programs that we will always need as a national commitment to our unemployed. These programs may be improved over the years like we tried to improve the CETA Program. We now have the Job Training Partnership Act.

My own personal commitment is always to have a program related to training that is government-sponsored. I think that is very important, Bill. You have made that point.

Another point I would like to make is that I don't see the bills competing with each other. I think they are complementary. One is really geared toward the preventive approach, and I think, Nancy,

that is your kind of approach, and the other relates to the needs of the displaced workers and future retirement programs.

I, for one, could intellectually and personally support both concepts with no problem whatsoever—as long as we never say this replaces the State programs that we will always have to have as a Nation.

The other point is about where this concept came from. Some of us, under the auspices of the Northeast-Midwest Coalition, visited Germany and Sweden, and we saw—and Bill was one of the members who joined us on that trip—very similar concepts.

In many ways, countries like Germany and Sweden are a little bit ahead of us in terms of how they look to the future and how they deal with their employees. It is a form of both areas being discussed today.

In terms of the concept and development of the ITA, we have given a great deal of credit to Pat Choate, our next witness. We have canonized you, Pat, and no one can handle it better than you.

I think groups like your organization, Bill and Nancy, and the countless meetings that Dick, Sherry, I and others have had on the issue have been helpful in trying to develop the ITA approach. Dick, Sherry, and I have met as a group with the labor union movement, the Chamber of Commerce, and other organizations about the ITA bill, because we feel that a coalition, not only of Republicans and Democrats, but of business and labor and Government is important for developing strategies for the future.

Mr. BOEHLERT. Madam Chairman, I just wish you could bring all of our colleagues to the Polaris Training Center in Cleveland. We were there and saw something extremely unusual, at least it was a first-time experience for me.

We saw training programs that had a 100-percent placement record. Every single graduate of the training program was immediately placed in a good job, and yet, they had vacancies in the training program.

And we asked why. And the response was very typical—displaced worker, exhausted unemployment benefits, now on welfare assistance, food stamps, doesn't have a dime to pay the tuition that is required of a training center like the Polaris Vocational Training Center.

Yet, if we had some fund like this, where that individual could take out $1,200 to pay, to fill one of those vacancies, get 26 or 39 weeks of training, and they go out and their batting average is 1,000, and that wins the title in any league.

I would recommend that you encourage as many of our colleagues as you can to visit that facility. It is doing a magnificent job.

Ms. OAKAR. Thank you very much.

I would like to extend an invitation to all of you to join the subcommittee for the hearing. I know you are all very busy today. But if any of you would like to join the committee, we would be happy to have you sit with the committee. Thank you all very, very much.

Ms. OAKAR. Our next witness is Dr. Pat Choate, consultant for TRW. He will be jointed by Patrick J. O'Keefe, the Deputy Assistant Secretary of the Department of Labor, and Robert L. Craig with the American Society for Training and Development.

Gentlemen, we are very, very happy to have you today. We have already heard about you enough. Pat, perhaps you can tell us a little bit about some of the job training strategies.

The nice thing about this—I think all my colleagues will agree—is very often we have so many great ideas that people develop or think of, but somewhere along the line they fail to come to those of us who are in positions to bring them to fruition.

Pat has not been modest and shy about coming to us with his ideas. I am personally grateful for that. It has been just outstanding to have you as a kind of mentor in this area.

We are grateful to TRW as well for the good work they have done in having you loan yourself occasionally—your ideas, I should say—to our efforts.

Pat, thank you very much for being here. Please proceed.

STATEMENT OF PAT CHOATE, SENIOR POLICY ANALYST, ECONOMICS, TRW INC.

Mr. CHOATE. Thank you very much, Madam Chairman.

I would first of all like to thank the members for their very gracious comments. In fairness, I think I have to acknowledge although I may have had something to do with some of the glimmering of the ideas, it has been the Members themselves and their staffs, and the staffs of the Wednesday Group and the Northeast-Midwest Coalition that have taken an idea and made them into really workable concepts.

And that is, as you indicated, the consequence of much work with Members and their staffs and with other outside experts. As a result of that, I think the two bills that are being discussed in this hearing are workable bills, and they are bills that, in large measure, have most of the bugs out of them.

I think also they are important for another reason, in that they address comprehensively a major problem that this country is going to face over the next several decades, and that is rapid change that may produce enough jobs, but still produce a turbulent undercurrent of unemployment and displacement.

If I might, Madam Chairman, I would like to submit my testimony for the record and then take 3 or 4 minutes and summarize it.

Ms. OAKAR. Very good.

Mr. CHOATE. At its heart what I am arguing in my testimony is, first, that there will be enough jobs in the economy.

But even if there are enough jobs in the economy, what we are going to see is 600,000 to 1 million or more workers each year, and at any given time in the United States, permanently displaced from their jobs because their jobs will have disappeared because of change.

That is a change that is going to be unavoidable over the forthcoming years. I think we should accept that.

I think that the two bills that are now being considered in effect acknowledge that that change is a permanent condition of our economy.

Second, I think it important for us to recognize that we don't know precisely who those 600,000 or 1 million or 1½ million work-

ers will be at any given point in time. It reflects technological advance that we cannot predict.

It may reflect increased competitiveness of other nations that we cannot anticipate. Thus, it becomes important with that degree of uncertainty to have a program that is sufficiently flexible to be able to address these problems of change.

I believe the two bills being considered address that comprehensively. I think they meet some basic criteria.

The bills are comprehensive; they permit individual choice; they are based on a sound financial system, on independent financing. It is equitable. If you need, it is there; if you don't, you get the money for other purposes—and there is a sharing of responsibility.

I would also agree with you, Madam Chairman. I believe the bills that have been presented are quite complementary. One bill, the Training Incentives Act, introduced by Mrs. Johnson and Mr. Clinger, will prevent a great deal of displacement through encouraging firms to invest more in training to, in effect, put training on parity with plant and equipment and technology for investment.

At the same time, I think it is true that even with that investment, we will have displacement. The Individual Training Account, I believe, will then deal with those workers that fall out of the employment network, and, again, give the type of flexibility and individual choice that was described earlier in the testimony.

Finally, I think the concept of a training IRA would, in effect, give to many workers that extra moneys that may be necessary for retraining. What we are going to find with the displacement that is going to occur in the years ahead is that it is not going to be limited to just blue-collar workers.

It will include professionals, it will include technicians, it will include managers. We are already seeing that happen.

They are going to require more than $4,000 in many cases for retraining. A training IRA will permit, I believe, those workers to save and anticipate that change and to give them the extra resources they need for that training.

In those cases where firms do not wish to participate in an ITA program, then the workers themselves have a fallback position that will permit them to engage in retraining efforts, or a safety net.

So in summation, the Nation now faces a situation where turbulent change is going to be a national condition. We can logically expect a significant number of workers to drop out of the work force each year because they will be displaced because of this change.

We do not know precisely who these workers are. And the two pieces of legislation that have been proposed are, I believe, at this point in time effective ways to address that problem flexibly and on a sound financial basis.

Ms. OAKAR. Thank you very much. I wanted to add that you are the author of a book that is one of the best sellers on the issue, "Retooling the American Work Force Towards a National Training Strategy."

[Mr. Choate's prepared statement follows:]

Testimony
of
Pat Choate
Senior Policy Analyst, Economics
TRW Inc.

Before

The Subcommittee on Economic Stabilization
Committee on Banking, Finance and Urban Affairs
House of Representatives
98th Congress
Washington, D.C.
July 31, 1984

Mr. Chairman and Members of the Subcommittee:

I am pleased and honored to have the opportunity once again to appear before you. When I last testified, the subject was industrial competitiveness. What impressed me then, as it does now, were some of the facts those hearings brought to light. Specifically, that:

- while 20 years ago trade and foreign investment constituted less than 13 percent of the U.S.'s total Gross National Product (GNP); in 1983, it was over 25 percent;
- while only 20 percent of America's goods producing industries were subject to foreign competition two decades, over 70 percent are now; and that
- while at least 100,000 advanced robots will be in operation in the U.S. by 1990, over 900,000 will be in operation outside the U.S.

As these and other facts clearly suggest, work in the U.S. is undergoing massive, far-reaching and irreversible change. What is also clear is that most American workers -- blue collar, professional, technical and managerial -- will require retraining and perhaps even relocation at some point in their careers, perhaps at several points. The fortunate ones will make those adjustments while they are employed, adapting to change along with their employers. Others, however, will be forced to make

these changes while they are unemployed -- displaced from jobs that will have disappeared forever.

Today, the importance of the displaced worker topic is derived less from any of the particular remedies before the Congress, but more from the explicit recognition by those appearing before you, including myself, of the need for the nation to institute new approaches that will better assist displaced workers prepare themselves for reemployment. It is in that vein that I offer my comments this morning. And to be fair to the Committee, I want to emphasize that my comments are my personal observations and views and not necessarily those of any others.

In exploring this topic, I will address three basic questions: The first is can the U.S. create enough jobs for all those who wish to work? The second is how many displaced workers will exist and who will they be? And third, what are the characteristics that should guide the creation of any efforts to assist displaced workers? Also, I wish to offer some comments on two pertinent pieces of legislation now before the Congress -- H.R. 4832 and H.R. 5159.

Will There Be Enough Good Jobs?

As to the question of will there be enough jobs, the answer is yes. For the balance of this decade and in the next, enough new jobs, beyond normal attrition, will be created to provide work for virtually all who wish to work. I believe we can be reasonably certain about his because of the arithmetic of jobs in the U.S. It depends on two basic factors -- the number of people who will want jobs and the ability of the economy to produce those jobs.

The number of people who will want jobs can be accurately estimated because over 80 percent of the workers in the year 2000 are already adults and most are already at work. The U.S. Bureau of the Census projects that over the next 25 years the labor force will grow at a very slow rate, about 1 percent annually. Thus between 30 to 35 million new jobs must be created over the next quarter century if unemployment is to be held at roughly a 6 percent level. Put into perspective, America's job creation challenge over the the next quarter century will be less than that of the past quarter century. Then almost 40 million new jobs were created, and the number of jobs created exceeded the standard forecasts.

Perhaps the best indication of the economy's ability to produce enough jobs is found in the projections of the Bureau of Labor Statistics (BLS). It projects that between 1982-1995, the American economy will produce over 25 million new jobs: 18.7 million in the service industries and 6.5 million in non-manufacturing. During this same period, the labor

force will only increase by 21 million workers. These estimates appear realistic. They are based on the assumption that productivity will grow at about 1.6 annually and the GNP will grow at a real annual growth of about 3 percent.

Thus, it appears that the U.S. economy will create enough jobs for the next decade. Moreover, the BLS projects that most of those jobs will exist in the same occupations that now exist. Thus to the extent that today's jobs are or are not good jobs so to will they be for the next decade.

What these aggregate numbers fail to highlight, however, is the great turbulence which is likely to exist in the labor market with the rise of old industries, decline of old ones, the mechanization of much of the nation's production and the increased involvement of the nation in global trade. This underlying turbulence is sure to create worker displacement.

How Many Displaced Workers Will There Be?

No one knows how many displaced workers there are. This reflects definitional problems and the limited amount of research that has been done. However, the studies which do exist suggest that a significant number of workers are likely to be displaced at any given time.

The Congressional Budget Office (CBO), using a conservative array of single criteria, such as displaced workers over age 45 or workers in declining occupations, estimates that in 1982 that between 840,000 and 2.2 million American workers were displaced from their old jobs. Obviously, the number of displaced workers would be substantially higher if the total included other categories of displaced workers -- for example, those under age 45, those in stable occupations, or those residing in economically vital areas such as the displaced Atari workers in the Silicon Valley. Conversely, if additional criteria or restrictions were considered, such as raising the definitional age to 50 or considering only workers in the automobile industry, the number of workers categorized as displaced would be reduced.

Subsequent estimates by students of this topic such as Malcolm Lovell and Kenneth McCellan have placed the number of displaced workers at between 600,000 to 1 million at any given time.

Even if the lower estimates of the number of displaced workers is used, it is clear that their continued unemployment creates high costs to the economy in terms of the diminished competitiveness of individual firms, reduced Gross National Product because of lost production, increased demands on the Unemployment Insurance system, and a greater reliance on social programs such as welfare and food stamps. Moreover, the high

personal costs to the affected workers and their families are large, but incalculable.

As you know, the displaced worker problem has not gone unnoticed by either the government or the private sector. Over the past 50 years, the federal government has created many programs that provide displaced workers with a range of assistance, from information and counseling to income maintenance and retraining. Indeed, 22 federal grant-in-aid programs, most of them created during the past two decades, are designed specifically to facilitate displaced worker adjustment. Most of these programs are narrow gauged efforts to assist specific groups of workers in specific industries or specific places, such as displaced redwood forest workers or those adversely affected by imports.

The latest national effort to assist displaced workers -- Title III of the Jobs Training Partnership Act -- is an important piece of legislation because for the first time the federal government has assumed the responsibility to deal comprehensively with the issue -- that is, eligibility is not limited to any particular region, occupation or industry. With the adoption of this legislation, the nation recognized that displacement was likely to be a permanent part of economic change and that virtually all workers in virtually all industries were vulnerable to the vissitudes of change.

At the same time, a few companies, in cooperation with the unions representing their employees, have established special programs to assist displaced workers. For example, Ford, General Motors, General Electric and, most recently, AT&T will provide displaced workers with extra severance pay, retraining or out-placement.

Under the 1983 contract between the Communications Workers and AT&T, training and retraining will be available to workers whose jobs are affected by technological innovation. These programs will be financed by the company and administered jointly by the company and the union. For workers who are going to be laid off, the company will provide funds for job training and relocation assistance.

Also, a few states such as California, Illinois and Delaware have initiated state programs to assist displaced workers through training, counseling and placement programs. One of my colleagues on this panel, Dr. Dennis Carey, Secretary of Labor for the State of Delaware has done pioneering work in adapting existing programs and creating new ones to assist displaced workers -- and with great success.

Guidelines for an Effective Displaced Worker Program

If the nation's displaced workers are to be assisted in making the transitions they face, several actions are required. And the most

important of these is to prevent worker displacement in the first place. But if that is to be, then employers must be encouraged to invest more in the training of their workers -- to keep their skills abreast with the changing demands of their work.

Unfortunately, public policy today gives special incentives to firms to invest in two of the three factors of production -- capital equipment and Research and Development -- but not in the third: the training and retraining of the workers. H.R. 5119, which has been introduced by Congresswoman Nancy Johnson and Congressman William Clinger, addresses that gap in public policy in a forthright and workable manner by giving firms tax credits for training. This approach gives great flexibility to firms in choosing which training to select and gives the government great assurance the tax expenditure will be used wisely since firms are unlikely to invest in that which they do not find productive. By encouraging more training by employers, much worker displacement can be prevented, but not all.

As a natural consequence of economic change, millions of workers can be expected to become displaced workers in the years ahead. If they are to be reemployed with speed, efficiency and dignity, some reforms in the nation's training policies are required. Some of these reforms involve making existing programs work better. Others are also needed which center around new policies and programs, including new financing mechanisms that will have permanent solvency.

These reforms need not be made all at once, but can be undertaken individually, as time and circumstances permit. To ensure that individual reforms will eventually fit into an ordered whole, however, it is necessary to define some basic principles that should guide both the reform of existing programs and the creation of new ones:

1. Individual choice.

   Ultimately, the displaced workers themselves bear the major costs associated with structural unemployment and have the most to gain from their own reemployment. Thus, to the full extent possible, these workers must be given individual choice in the basic decisions made in any adjustment assistance program.

2. Comprehensive coverage.

   Because the incidence and timing of structural unemployment are difficult to predict -- potentially affecting anyone, anywhere -- any program to assist displaced workers must cover everyone who is displaced.

3. Linkage of displaced worker assistance to income support.

Any new displaced worker assistance program should be linked to the Unemployment Insurance System so workers have income while they are in training.

4. Early intervention.

Under existing displaced worker programs, too long a period is permitted to elapse before action is taken. This slows the processes of worker adjustment and raises the costs to both business and government of operating the UI system. Earlier intervention is urgently required.

5. Assured financing.

If comprehensive coverage and early interventions are to become a reality, assured financing is needed. This will require a new financing mechanism that does not depend on annual appropriations from the federal, state or local governments.

6. Flexibility.

Because of the uncertainty of structural change any displaced worker adjustment assistance system must be flexible enough to meet the diverse needs that may arise.

7. Improve existing systems.

Many of the elements of an effective comprehensive displaced worker program -- such as the Employment Service and UI system -- already exist. Their programs such as job referral services and counseling systems must be given necessary resources, modernized technology and a clear mandate.

Reforms in current programs will substantially enhance the quality and effectiveness of the nation's displaced worker assistance efforts. Even after existing systems are improved, however, the linchpin of a comprehensive displaced worker assistance program will have yet to be put in place -- namely, a new financing mechanism that can effectively guarantee the availability of retraining and relocation assistance for the millions of workers whose jobs will be abolished in the years ahead.

The costs of retraining will be high but not prohibitive. Moreover, not all workers will need or want retraining or relocate. Simply put, no one

knows how many will want or need retraining -- only that many will. Thus, a flexible approach is required.

There are a number of alternative ways to finance such a comprehensive and flexible displaced worker assistance system, including direct federal or state funding; the use of some part of UI entitlements for retraining; or the creation of a wholly new self-financing mechanism -- the Individual Training Account (ITA) called for in H.R. 4832 which has been introduced by Congressman Richard Durbin, Congressman Sherwood Boehlert and Congresswoman Mary Rose Oakar.

As proposed in their legislation, the Individual Training Account (ITA) would be a flexible, simple-to-administer, self-financing system designed to speed the reemployment of displaced workers by providing funds for retraining and, if necessary, relocation as well. Because it is self-financing, the ITA would not add to the already severe financial pressures on the UI system; nor would it depend on annual grant-in-aid appropriations from the Congress.

The ITA blends two of the nation's best experiences in training and savings -- the voucher-based national retraining program, the G.I. Bill, and the savings- and equity-based system, the Individual Retirement Account. The ITA has a number of attractive features:

- It is portable -- tied to the worker and not to the job;
- It has a built-in incentives for prudent use -- at retirement of the worker the unused portions, plus accumulated interest, are returned to both the worker and the employer;
- It is not dependent on annual appropriations;
- It would increase the nation's savings;
- It has caps on contributions;
- It would permit great flexibility of choice for the worker in the selection of training programs to take and where.

The ITA as embodied in H.R. 4832 is a workable approach to a major national challenge.

H.R. 5159 has another feature which I find quite attractive, the provision that permits individuals to use funds from an IRA for retraining. Many individuals will need more than the $4,000 that the ITA provides. For those workers, the extra funds provided by a Training IRA (T-IRA) would be a useful supplement.

Together, H.R. 5159 and H.R. 4832 build a complementary mosaic of programs. The training investment credit, the ITA and the T-IRA will prevent some displacement by encouraging firms to invest more and yet offer a flexible underpinning of retraining/relocation assistance to those who are displaced.

Summary

If the United States is to keep pace with, even be ahead of, the velocity of economic and technological change, then the nation must be prepared to help its workers adapt to a changing economy. Creation of an effective displaced worker program must be a primary part of that effort.

H.R. 4832 and H.R. 5159 create national policies and national programs that will assist workers and firms make those adaptations with confidence, efficiency and dignity.

Thank you.

Ms. OAKAR. Mr. O'Keefe is the next witness. I did want to mention he is the Deputy Assistant Secretary for Employment and Training in our Department of Labor, and he has directed the implementation and does oversee the Job Training Partnership Act Programs. Previously, he served as Administrator in the Office of Strategic Planning and Policy Development and as a Deputy Director of the National Commission on Employment Policy.

Because of the short time in which we organized this hearing, we understand that your remarks will reflect your personal views as opposed to the views of the Department. Is that right?

STATEMENT OF PATRICK O'KEEFE, DEPUTY ASSISTANT SECRETARY, U.S. DEPARTMENT OF LABOR

Mr. O'KEEFE. Yes, Madam Chairman. That is the case. I do appreciate the opportunity to come and appear before the subcommittee.

Like the other witnesses, I think you are to be commended for taking on a very important issue; not an issue just for 1984, but an issue will be with us certainly for the rest of this century.

I will organize my remarks around two themes. One is to discuss briefly title III of the Job Training Partnership Act, the Dislocated Workers Program currently on the books; and then talk about the concept of Individual Training Accounts.

We need to recall, at the outset, that the concept of dislocated workers does not lend itself to precise definition. None of us can parade in here a stereotype and say this represents all dislocated workers in all of the United States. In an economy as dynamic and diverse as ours, the concept changes over time and across places.

I think Dr. Choate does us a great service in reminding us that it is not just a blue-collar phenomenon—that the stereotype of a steel mill somewhere in this country that encapsulates everything about dislocated workers is not something that we can use as the basic assumption for policy making.

In broad terms, dislocated workers are individuals that have two basic characteristics, it seems to me. One is they have had a stable

attachment to a specific job for some period of time. We would have to put some details on that; but I think that is one aspect of it. The second is that the individual is confronted with the permanent loss of that job.

When I say confronted, I use that word to include both those individuals already laid off, and those persons scheduled for lay off. We don't have to wait for the trauma of unemployment to determine that an individual is a dislocated worker.

I would also point out that we don't have a precise estimate of the number of dislocated workers. It is going to change with the course of the business cycle; it will change as technological developments come on line.

What we do know is that, depending on your definition, the estimates will vary very widely, anywhere from one-half million to 3 million.

I think another thing that we have to remind ourselves is that we do not have sufficient experience to date to be able to point to one strategy and say this is the best way to train people for reemployment. Perhaps the only common thread is that typically there is a need to convince the individuals that they are very unlikely to return to their former employment.

We have heard the anecdotes of workers laid off from a plant that has very little likelihood of reopening. Yet every day they go back down to the plant in belief that somehow that facility will reopen and their job will reappear.

I raise this background not to argue against action, quite the contrary. I raise it to underscore a word that I think has to be the byword of the way in which we proceed.

It is a word Dr. Choate has used: flexibility. I think no matter what we do, we have to retain for the individuals and for employers the maximum degree of flexibility to respond to the economic circumstances in which they are operating.

Let me now turn to title III of the Job Training Partnership Act. That law was signed into law by President Reagan on October 12, 1982. It became fully operational October 1, 1983.

So we have roughly 9 months worth of experience. The dislocated worker program, which is only one component of that legislation, emphasizes training and job search assistance as the means by which we will return people to regular self-sustaining employment.

It does permit the training and the employment services to be provided prior to the separation of the individual—if there is a very clear recognition that dislocation is going to occur in that employing establishment.

It defines dislocated workers broadly, giving to the governors the discretion to identify which groups of workers are truly dislocated. And it is administered in a block grant form so that the States and localities have the maximum degree of flexibility to fashion their programs to respond to the local circumstance that they are addressing.

For the current program year about $223 million has been appropriated for title III of the Job Training Partnership Act. We estimate this will serve 90,000 to 100,000 individuals.

As I said before, the program became fully operational in October of 1983, although we did have some early funding for the dislo-

cated workers program. Through March of 1984, which is the most recent period for which we have data, approximately 65,000 individuals have been served.

One thing we observe is that the cost for training in this program is somewhat below the $5,000 to $5,500 we originally estimated that a unit of training per year would cost in this program.

The program has demonstrated the kind of flexibility that I think we would all look for. We see under title III, projects serving dislocated workers in Pennsylvania and Ohio who have been disemployed from steel plants.

It is serving people on the southwest border disemployed because of the freeze that occurred last December in the citrus groves and the devaluation of the peso.

It is being used to serve people who have been thrown out of work because of the closing of tuna canneries in California.

So it has displayed substantial flexibility.

One thing that we are observing is that the title III program, I think, because it is administered in large part by public sector institutions, it tends to be project oriented.

We tend to think in terms of classroom size training or projects that will serve large groups of people. Let me take you back a moment to what I was saying about the stereotype.

Not all dislocation occurs—in fact, a substantial part of dislocation does not occur because of plant closings, or because there has been a major phasing down.

It often occurs because certain clusters of occupations with an employer have become insufficiently productive for the employer to maintain that activity.

So I think, therefore, there is in the administration of JTPA some limitation of its flexibility in that it tends to be project oriented. It is still too early to say that is the only approach that we are going to see; but in the first 6 months that is one of its key characteristics.

Let me now turn to the concept of Individual Training Accounts. There are several pieces of legislation and I think many of them are complementary. I would rather stay with the concept, however, than to deal with the specifics of the various proposals.

The concept of an Individual Training Account does deserve very serious consideration as part of our overall employment policies in this country. I think that is the case for several reasons.

Number one is because this concept, if adopted, would encourage human capital formation and regeneration. It would get us out of the mode of thinking about ourselves as batteries, that we charge with human capital at the beginning of our lives, but once we graduate from high school or college, we then have to carry ourselves forward on whatever that charge was.

The second thing that is very appealing to me is the fact that it is voluntary. It permits employers and workers to decide how the compensation package is to be allocated across the full spectrum of benefits—wages, leisure, training, and so on. It permits the decisionmaking to occur in the context of labor/management negotiation which serves this country so well.

The third thing, and I just keep coming back to this because I think it is key, is that it retains the flexibility that individuals

need to be able to decide what their interests are as jobseekers, what are their aspirations, what is the training that is going to prepare them to achieve those aspirations.

And the last feature of it is that it potentially provides a funding mechanism that would not otherwise be available to small and intermediate employers in the same way it would be available to large employers.

I think there are questions with any of these proposals that we cannot ignore. Certainly one of those questions has to be the fiscal implications. And the second thing is that the enactment of it, while it is certainly not competitive with other policies, may require adjustment in the policies that are currently in place.

Madam Chairman, I appreciate the opportunity of being here.

Ms. OAKAR. Thank you for your comments.

Mr. Craig is the vice president, government affairs, for the American Society for Training and Development. He is the editor and publisher of the National Report for Training and Development and has served as the senior editor of the Training and Development Handbook. For a long time, he was the editor of the Training and Development Journal.

We are very happy to have you as a witness today. You have a long background in terms of being interested in the subject. We are happy to have your testimony.

STATEMENT OF ROBERT L. CRAIG, VICE PRESIDENT, GOVERNMENT AFFAIRS, AMERICAN SOCIETY FOR TRAINING AND DEVELOPMENT

Mr. CRAIG. Thank you very much. I am especially pleased to be here today to represent the 50,000 members of the American Society for Training and Development. They are people engaged in employer provided education and training.

You are probably aware, but if you are not, that is the largest single force in the retraining of the American work force today. Our best guess, although the data are, to use the technical term, lousy—our best guess is that employers spend something like $30 billion annually in direct and indirect costs. That does not include the salaries and wages of those being trained.

That is why we are interested in job training legislation, because that is our business.

We are very pleased and commend the Members of Congress who have introduced these recent legislative proposals that deal with job training legislation, because we believe that the competency of our overall national work force—and that includes from entry level through the crafts people, through the office and clerical and support people, through the professionals, engineers, and the managers, in all sectors—represents the greatest asset this country has. It is a key factor in national economic health.

Consequently, we support legislative measures that recognize the importance of investing in human capital such as your proposal to give tax credits to employers for the employee training costs, that is part of H.R. 5159, the National Training Incentives Act.

Now, despite the fact that employers spend a great deal of money, there is still an underinvestment in our opinion. But we do

suggest some changes in H.R. 5159 on this provision in order to help ensure its success.

One, we believe that you need a good working definition of training, because this would preclude a great deal of administrative confusion and dispute later on. We are now conducting research partially sponsored by the National Institute of Education on the nature and extent of employee education and training.

And we have evolved a definition of employee training for that purpose. We suggest, and we have suggested to some of your people, that it might be used as a basis for defining employee training.

It has to be an organized effort, for example. But it should not include the informal, on-the-job training or coaching and supervision. Otherwise, I think it becomes unmanageable right away, and you will have a lot of difference of opinion.

Another suggestion along the same lines is to set guidelines as clearly as is practical for what kind of training costs are allowable as tax credits. Unfortunately, there is little consistency now in how employers account for training costs.

Unless we have some clear guidelines, we are going to get into trouble about what training is or is not. Some employers include direct costs for training, some indirect costs, some do include salaries and wages.

And there are big differences in what the training costs are. This is a rather complex matter, and, again, we have come up with some sample cost models in our research which we have suggested to your staff.

Incidentally, we have just conducted a survey of a group of 600 or 700 senior managers of human resource development in the private sector, people in our field, and we had 92 percent of the responses in favor of tax credits for employer investment in the training.

In the same survey, 73 percent of the responses favored the provision for elimination of the penalties for the withdrawal of individual retirement account funds by displaced workers who would use those funds for job retraining and without penalties.

So we would support that fully. On the other hand, we do have some concern on the individual training account issue. While our survey showed 70 percent of these people favored ITA's, our national issues committee, which discussed these issues at length, had some concerns.

The net result of ITA's could be that higher income people would use it for a tax shelter. Lower income people with limited discretionary income might feel they could not afford the ITA's. And you would end up perhaps with a net revenue loss in the form of tax shelters and little use of the mechanism for training the people who need it most. But we admire the intent and purpose.

Now, I would like to raise another employee development issue that is causing extensive concern among a wide range of interests—labor, education, business, industry, and so on. In June, the Joint Tax Committee Conference failed to extend section 127 of the Tax Code which deals with employee education assistance.

And now we are back to Treasury regulation 162–5, which says that you can only exclude employer provided educational assist-

ance if it relates to your present work. If it prepares you for the job or advances your job, it becomes taxable income.

Now, a lot of people have a myth—like Assistant Secretary of the Treasury, John Chapoton, who just the other day said that section 127 is a perk, obviously for executives, and also that it is a revenue loser.

First-hand evidence shows that is not true. Lower-level people trying to get ahead obviously get taxed under that principle for moving ahead, which we would term regressive taxation.

For example, we have had reports just recently from the American Institute of Banking that show that students in their school of banking are 68 percent female, 68 percent immigrants, 76 percent bank clerks and secretaries, and only 8 percent bank officers.

Because Congress did not extend section 127, two large banks in New York have already started to withhold taxes, and have experienced drops in participation rates in tuition aid programs by 47 and 50 percent, mostly by lower-level people.

The director of the Continuing Education Institute in Boston, which uses section 127 tuition aid for remedial education for employees, showed that 22 percent of his graduates had received promotions, 50 percent had gone on to additional education and training. In that program 76 percent were women, 63 percent minorities, 25 percent had been on welfare at one time, and only 25 percent had attended high school. Thirty-two percent were born outside the United States, a mere 12 percent were reading at high school level when enrolled. I don't think that is a perk. We have data attached to my testimony here which shows a lot more of that kind of thing.

We do want to disspell that myth. We have also shown that Treasury would gain more revenue through the increased income taxes on the more qualified people as a result of their education and earning more income. And that is a pretty easy calculation.

Also, as Pat Choate told us, section 127 would reduce cost to the Federal Government through lower unemployment costs and higher productivity. Anyhow, we hope you might do anything you can to extend section 127 of the Tax Code, which we hope will again come up this year before Congress.

In the overall context, I would like to make several points on job training legislation that would be, in our opinion, worth considering. One is employers should be encouraged to invest more heavily in human capital, such as you are doing with the tax credit proposal.

Two, I think that we should encourage publicly supported occupational education to work more closely with employers.

Three, encourage more collaboration among employers to share in joint human resource development activities without punitive Federal regulations, such as antitrust and tax issues. This is a serious issue on the leading edge of technology. We have difficulty in developing enough qualified people—managers, professionals and technicians. When companies get together and talk about doing this on a joint basis, company lawyers get very antsy on antitrust issues.

The fourth item is to encourage exchange between innovative Federal research and development in training technology and

human resources, such as the Department of Defense is doing, and all private sector job training.

And our fifth point is to reinstate section 127 of the Tax Code promptly. We believe that responsiveness to the changing needs for new work force knowledge and skill is the key to the economic success for the nation.

We believe stronger orientation to these changing needs is how we are going to be able to keep and create jobs for Americans.

Thank you very much.

Ms. OAKAR. Thank you very much, Mr. Craig.

[Mr. Craig's prepared statement, on behalf of the American Society for Training and Development, follows:]

Statement of

Robert L. Craig
Vice President, Government Affairs
American Society for Training and Development

regarding

Job Training Legislation

before the

Subcommittee on Economic Stabilization

John J. LaFalce, Chairman

July 31, 1984

I am Robert L. Craig of the American Society for Training and Development. I am pleased to be here today to represent our Society's 50,000 members who are engaged in employer-provided education and training. You are probably aware that our field is the largest single force in the retraining of the American work force. Our best guess is that employers are now spending some $30 billion, at least, in this effort and all signs indicate that this investment in employee development will increase. Thus, we have very direct interest in national job training legislation.

We are very pleased to see that recent legislative proposals have been directed to the broader aspects of work force development. The competency of our overall national work force -- from entry level to professionals and managers -- in all sectors -- represents the greatest asset the nation has and is the key factor in national economic health.

Consequently, we support legislative measures that recognize the importance of investing in human capital such as the proposal to give tax credits to employers for their employee training costs that is part of H.R. 5159, The National Training Incentives Act of 1984.

We do suggest some changes in H.R. 5159 which we believe would help insure its success.

We believe that a good working definition of training in the bill would preclude a great deal of administrative confusion later on. We are presently conducting research, partially sponsored by the National Institute of Education, into the nature and extent of employee training, and we suggest the use of a definition of training similar to that we have evolved for that project. It is:

> "Employee training is an organized effort provided, or paid for, all or in part, by an employer and designed to improve job performance, career progress, or organizational effectiveness. It includes classroom, laboratory, vendor-provided seminars, directed independent study and other activities with a clear learner/instructor or other developed program characteristic. It does not include informal on-the-job coaching or supervision."

We can attest to likely confusion in regulatory interpretation of what training is and is not in the absence of clear intent. Confusion has been a major problem with Treasury regulation 162-5 which now applies to employer tuition aid since tax code Section 127 on Employee Educational Assistance has been allowed to expire.

Another suggestion we would make is to set guidelines, as clearly as is practical, for what kind of training costs are allowable for tax credits. Unfortunately, there is little consistency in how employers account for training costs. Some include direct costs only, some indirect costs, and some include the salaries and wages of those being trained. This is a rather complex matter which, unless anticipated in any ensuing statute

and regulation, could also lead to extensive administrative confusion and dispute. We have been developing standard training cost accounting models in our research program and have suggested their consideration to the bill's sponsors.

Incidentally, we have just conducted a survey of a sample of senior managers in our field of human resource development and 92% of the responses were in favor of tax credits for employer investment in employee training.

In the same survey, 73% of the responses favored the elimination of penalties for the withdrawal of Individual Retirement Account funds by displaced workers who would use IRA funds for job retraining. We see that some economically distressed unemployed workers might well be forced to use IRA funds for acquiring new job skills and this provision would merely remove the penalty for doing so.

On the other hand, we have some concern for the Individual Training Accounts as proposed in H.R. 4832. While our new survey shows that about 70% of our senior manager sample favored ITAs, our National Issues Committee has raised some questions. Our Committee discussed the issue at length and, on the basis of available evidence, raised some questions. It would appear entirely possible that higher income people, who would not be as likely to need funds for job retraining, would use ITAs as tax shelters, not retraining. At the same time, lower income people, who would likely have more need for job retraining aid, would be less likely

to participate voluntarily because of limited discretionary income for that purpose. The net result might be a loss of federal tax revenue through this additional tax shelter with little use of the mechanism for the intended retraining purpose.

Now, I should like to raise another employee development issue that is causing extensive concern among a wide range of interests. The June joint tax committee conference failed to extend the employee education assistance provisions of the tax code. After being in effect for five years, it expired December 31, 1983 and now Treasury regulation 162-5 again applies to employer-provided tuition aid for employee education. Regulation 162-5 says that if employer tuition aid for education does not relate only to your present work, it is subject to employee income tax, Social Security tax and unemployment tax. Not only did this regulation cause great confusion because of widely-varying interpretation of what is directly job related but it results in severe discrimination against lower-level employees. Higher-level employees with broad job descriptions can obviously relate many kinds of education to their jobs. Lower-level people trying to get ahead through acquiring new knowledge and skill with their employer's financial help can not. Somehow, there is a lot of mythology around that Section 127 is a perk. That's what Assistant Secretary of the Treasury John E. Chapoton has labeled employee educational assistance -- a perk and a revenue loser.

Our first-hand knowledge of how employer tuition aid for education is actually used contradicts those contentions. Our evidence shows

that Section 127 caused dramatic increases in use of employer tuition aid by lower-level employees, particularly by women and minorities. For example, we have reports from the American Institute of Banking that the students in their School of Banking are 68% female, 68% immigrants, 76% bank clerks and secretaries with only 8% bank officers. Since Congress failed to extend Section 127, two large banks in New York started withholding income tax on tuition aid, and their participation rates have dropped 47% and 50% in these kinds of educational programs. Frank McMullen, Executive Director of AIB in New York, wrote us that "The springboard to upward mobility through non-unionized banking ranks has been sawed off by our national fathers."

Dr. Lloyd David, Director of the Continuing Education Institute in Boston, sees Section 127 "not as a luxury but a necessity." His Institute provides basic education to lower-level employees through employer tuition aid programs. He reports that a study of his 1982 program graduates who attended on the basis of Section 127 showed that 22% had received promotions, 50% had gone on to additional education and training. In that program, 76% were women, 63% minorities, 25% had been on welfare at one time, only 25% had attended high school, 32% were born outside the U.S. and a mere 12% were reading at a high school level when they enrolled. Is this kind of employer tuition aid really a perk?

We have also shown that the Treasury would actually gain more tax revenue from the higher income taxes collected from employees who made more money by increasing their earning capacity through more education. The nation's economy would also benefit from

lowered unemployment costs and from increased work force productivity. We want to try and dispell the myth that Section 127 is an executive perk and that it represents a revenue loss in the broader context of national interests.

William Raspberry, syndicated columnist at The Washington Post, in a July 25 op-ed page piece pointed out the unfairness of the Congressional inaction on this issue in his article, "Only the Little Guy Gets Hurt."

Hopefully, the Members of the House of Representatives will follow the Senate with prompt action to reinstate Section 127 in the same spirit represented by these bills, H.R. 4832 and H.R. 5159. We need to pay a great deal of attention to legislative measures which will improve the competence and the quality of our overall work force. Our human capital, all of it, is the critical factor in our national well being. We highly commend those Members of Congress who are working toward that end with these new initiatives.

In the overall context of the current trends in Congress, we see needs for federal legislation that would:

1. encourage employers to invest even more heavily in their human capital, our most critical national asset.
2. encourage publicly-supported occupational education to be more needs-oriented by working more closely with employers.
3. provide for collaboration among employers to share in joint human resource development activities without punitive federal regulation.

4. encourage exchange between innovative federal research and development in human resources and all private sector job training.

5. reinstate section 127 of the tax code promptly.

We believe that responsiveness to the changing needs for new work force knowledge and skill is the key to national economic success. We need stronger orientation to these changing needs if we are to keep jobs for Americans.

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AMERICAN SOCIETY FOR TRAINING AND DEVELOPMENT

Opinion Survey
of
Senior Human Resource Development Managers
regarding

Emerging Federal Legislation

July 31, 1984

Suite 305, 600 Maryland Avenue, S.W.
Washington, D.C. 20024

MEMORANDUM

TO: Senior HRD Managers

FROM: Robert L. Craig, Vice President, Government and Public Affairs

DATE: May 25, 1984

SUBJECT: Emerging Legislation

We have outlined below several proposals that have been made. There is little question that these represent a growing trend of Congressional interest to improve the quality of the work force and to provide job skills needed by individuals for employment.

1. Tax Credits for Training

H.R. 5159. The National Training Incentives Act of 1984 - One provision would allow employers a 25% tax credit for employee training costs, the same as employers have been able to do with R&D expenses. This tax credit would be in addition to treatment of training costs as deductible ordinary business expenses. The credit would apply only to additional expenses above the average spent for the previous five years.

A practical problem would be to define "training" and to set standards for allowable training costs. We are working with congressional staff on these matters. They seem to buy the following "definition of training" we suggested for the time being:

> Training is organized educational effort provided, or paid for, all or in part, by an employer and designed to improve job performance, career progress, or organizational effectiveness. It includes classroom, laboratory, vendor, seminar, directed independent study, and other activities with a clear student/teacher or developed program relationship. It does not include informal on-the-job coaching.

We still are working on allowable training costs categories.

Are you in favor of tax credits to employers for training costs?

Yes 92% No 8%

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2. Use of Individual Retirement Accounts (IRAs) for Retraining

H.R. 5159 - The National Training Incentives Act of 1984 (see above) - This bill also includes provision for employees to use their IRA funds, without withdrawal penalty, for the costs of retraining in new job skills in the event of job displacement or potential displacement.

Are you in favor of federal legislation authorizing the use of IRA funds for retraining?

Yes 73% No 27%

3. Individual Training Accounts

H.R. 4832 - National Individual Training Accounts Act of 1984 - Pat Choate, an economist at TRW, Inc., is usually credited with this notion of joint contributions by employees and employers to a fund which can be used by the employee for retraining for new job skills if needed. This particular bill sets the contribution at a minimum of $250 per year, or 0.8% of the employee's wages by both the employee and the employer until a total of $4,000 is accumulated. These contributions would not be subject to federal income tax -- much the same as IRAs. If the employee never used the money, it would revert to a retirement purpose, again like IRAs. The program would be voluntary for both employee and employer.

Are you in favor of legislation authorizing ITAs?

Yes 70% No 30%

4. Skills Corporation

United States Skills Corporation Act - This draft proposal would set up quasi-public "skills corporations" in each state funded 50% by business and industry, 25% by the state, and 25% by federal funds. The proposal would be to match job education and training resources with work place needs. The concept is modeled after the Bay State Skills Corporation in Massachusetts which is funded by employers and state funds only. Incidentally, the original bill proposed a national advisory group for the program of 13 people with only two representatives from the business community.

Do you favor the concept of federal legislation that would set up "skills corporations" at the state level?

Yes 30% No 70%

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5. Retraining

Congress has been showing high concern for retraining generally and especially for retraining those who have been or are being replaced by technology, foreign competition, and other factors beyond the control of the employee.

Do you believe that employers should play a role in this retraining? If so, what can or should employers be doing?

Yes 92% No 8%

Providing their own training resources for.....

	Retraining their own employees subject to displacement	Retraining other unemployed
Paid for by the employer	54%	6%
Paid for by the learner	4%	12%
Paid for by both learner and employer	28%	6%
Paid for by government	9%	2%
Supported by government through tax credits for employers	65%	42%

6. Administration of Federal Job Training Policy

Much of this new legislation would be administered through the U.S. Department of Labor. In the past, the ASTD National Issues Committee has favored federal administration of training matters through the most relevant agency (the Federal Aviation Administration for airlines training, the Nuclear Regulatory Commission for training in the nuclear field, etc.)

Do you agree with the "most relevant agency" concept or do you believe there should be one focal point for federal matters relating to work force HRD?

Relevant agency 68% Centralized 25%

If there should be one focal point for federal HRD policy, which agency do you believe it should be?

Department of Commerce	16%
Department of Education	18%
Department of Labor	22%
A new HRD agency	19%
Other	3%

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EMPLOYER TUITION REFUND PLAN
EMPLOYEE UTILIZATION AT ONE LARGE COMPANY
CALENDAR YEAR 1982

TOTAL EMPLOYEES: 40,063

Annual Salary Ranges	Percentage of Employees by Salary Range	(Cumulative)	Percentage of Employees in this Range Completing a Course	Percentage of Participating Employees in this Range	(Cumulative)
$5,000-$19,999	23%	23%	11.0%	35%	35%
$20,000-$24,999	17%	40%	8.1%	18%	53%
$25,000-$29,999	23%	63%	5.3%	17%	70%
$30,000-$34,999	10%	73%	10.5%	14%	84%
$35,000-$44,999	12%	85%	6.5%	11%	95%
$45,000-$64,999	10%	95%	3.7%	4%	99%
$65,000 and over	5%	100%	.4%	1%	100%

Summary

- 40% of the employees earn less than $25,000. Of these employees, 53% completed courses.
- 73% of the employees earn less than $35,000. Of these employees, 84% completed courses.
- Highest rate of participation is by employees in the lowest salary range, employees making less than $20,000 per year (11%).
- Of all employees who participate, the greatest percentage are those in the lowest salary range (35%).

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SAMPLE EMPLOYEE EDUCATIONAL ASSISTANCE DATA

Company A

Percent increase in participation by compensation level from 1977-1982:

Employee Class	% Increase (1977-1982)
Management	20%
Professional	26%
Non-exempt (non-supervisory)	46%
Hourly	30%

Company B

Years	% Increase in tuition aid participation
1977-1983	
Exempt Employees	45%
Non-Exempt Employees	50%

Education Reimbursements:

Year	Exempt (Supervisory)	Non-Exempt
1977	$19,855	$28,288
1982	$62,523	$65,409
1983 (Estimate)	$75,850	$79,350

Company C

Tuition Aid participation in 1983:

Total participants:	1,583
Management	503
Non-management	1,035
White male	468
Minority male	139
White female	560
Minority female	371

Company D

Employee Class	1977	1981
Management	10%	10%
Professional	44%	39%
Clerical/Technical Nonexempt Salary	33%	34%
Hourly	14%	17%
Male participants		4,738
Female participants		2,375

Company E

Employee Class	1977	1981
Management	3.97%	5.22%
Professional	10.23%	10.40%
Nonexempt Salary	6.95%	9.17%
Hourly	2.00%	2.64%

Company F

"The average percent of the population participating in tuition aid from 1979-1982 was 50% higher than in the years 1975-1978."

1982 Data on Tuition Aid by compensation level:

Employee Class	% in T.A.	% in Workforce
Exempt (Supervisory)	49%	49%
Nonexempt (non-supervisory)	51%	50%
Executive	0%	1%
Male	68%	75%
Female	32%	25%

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Company G	1978	1982
Participants in Tuition Aid	7,500	13,509
% participation in Tuition Aid	3.4%	6.3%
% women participants		32.0%
% women in company workforce		25.0%
% administrative (clerical, support) participants		25.0%
% administrative in company workforce		18.0%
% blue collar participants		5.0%
% blue collar in company workforce		9.0%
% manager participants		12.0%
% managers in company workforce		14.0%

Company H

	Educational Assistance Courses Completed
1978	174
1981	580

"65.1% increase in participation rates from 1978-1981".

Company I

Year	Number of Participants	% of Employees Participating
1977	2,319	4.83%
1978	2,324	4.84%
1979	3,421	9.27%
1980	5,360	10.80%
1981	4,857	9.83%
1982	6,047	12.40%
1983	6,500 (Estimate)	13,50%

Company J

Years	%Increase in Participation
1974-1981	+ 139%
1974-1982	+ 157%

Company K

1983 Tuition Aid Data

Total company workforce	600 employees
% participating in T.A.	10%

Company L

1978	261 tuition aid participants
	3,909 eligible employees
	6.7% tuition aid participation rate
1983	572 tuition aid participants
	4,300 eligible employees
	13.0% tuition aid participation rate

EMPLOYEE EDUCATIONAL ASSISTANCE

Sample data showing changes in participation rates for an organization's work force:

Organization	Year	No. of Employees Participating	% of Change
Company 1	1978	328	+85 %
	1981	606	
Company 2	1977	5,784	+23 %
	1981	7,107	
Company 3	1978	1,174	+40 %
	1982	1,641	
Company 4	1978	7,500	+80 %
	1982	13,509	
Company 5	1977	255	+109%
	1982	535	
Company 6	1977	5,784	+40 %
	1982	8,093	

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TUITION AID SURVEYS

1984 Valley National Corp.
N=75 96% with tuition assistance programs

1984 Jos. O'Neill - Conference of Small Private Colleges
N=655 96% with t.a. programs

1980 Jos. O'Neill - Conference of Small Private Colleges
N=358 98% with t.a. programs

1979 Industrial Relations News
N=363 employers 90% with t.a. programs

1979 Conference Board - 79% with t.a. programs for non-exempt production & operations personnel; 91% for non-exempt office and clerical personnel.

1978 AT&T
100 of Fortune 500 93% have t.a. plans

1977 Employers Assn. of Detroit
96% have t.a. plans

1977 BNA
N=141 employers, ½ with 1000 employees or more, and ½ with less than 1000 91% have t.a. plans

1977 City of Milwaukee
28 private sector organizations - 100% with t.a.
13 public sector organizations - 77% with t.a.

1977 American Assn. of Industrial Management of New England

hourly non exempt employees	77%
clerical, technical salaried non-exempt employees	96%
supervisory, professional exempt employees	89%

1976 Adult Education Council of Greater St. Louis
Business and Industry = 72% with t.a. programs
Hospitals = 81% with t.a. programs

1975 Conference Board
N=610 firms of 500 or more employees
89% have t.a. programs

1975 Miami University and General Accident Group Insurance Co.
over 90% have t.a. programs

no date Management Resources Assn., Inc. (Milwaukee)
91% of employees of a total 19,538 employees in 61 organizations covered by tuition aid plans

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DRAMATIC INCREASE IN EMPLOYER EDUCATIONAL SUPPORT

Data from the National Center for Education Statistics (U.S. Dept. of Education) strongly suggest that the now-expired Employee Educational Assistance tax legislation greatly encouraged those in the work force to take advantage of employer aid for education and retraining to improve job performance and to get new jobs.

According to NCES' *Participation in Adult Education* reports for 1978 and 1981, the number of adult education courses having business and industry as a source of payment rose nearly 74% during those three years. The new law, which stopped the Internal Revenue Service from making employees pay income tax on employer education aid, took effect on Jan. 1, 1979. It seems reasonable to conclude that excluding employer education aid from employee income tax helped substantially to increase work force participation in continuing education.

Moreover, some 92% of all adult education courses supported by business and industry in 1981 were taken for job-related reasons. Further, 56% of the participants in adult ed courses were women.

We should point out that these data reflect the "business and industry" category only. Because of inconsistencies of survey questions between survey years and other problems, we have not tried to include data relating to aid from "private organizations," partial support, governments as employers, etc.

The NCES data also indicate that the new law achieved its intended effect of getting more lower-paid people into continuing education. Traditionally, NCES data have shown that participation in adult education correlates closely with past education and level of income—the more prior education and the higher the income, the more likely one participates in more education. But the comparison of adult ed participation by occupation before and after the law was changed shows substantial increases in the rates of participation of lower-paid occupational groups.

Below is a listing of changes in the rates of participation in adult ed by occupational groups:

Occupation	*Percent Change of Rate of Participation 1978-1981*
Non-farm laborers	+28.1
Transport equipment operatives	+24.6
Operatives, except transport	+20.0
Craft and kindred workers	+18.6
Service workers, including private household	+17.0
Managers and administrators, except farm	+15.3
Sales workers	+ 8.6
Clerical workers	+ 4.2
Professional, technical and kindred workers	+ 1.2
Farm workers	- 15.0

These data and other evidence clearly indicate that not taxing employees for improving themselves encourages people to become better educated and more competent in their work. With the nation facing continually changing demands for new work force knowledge and skills—because of fierce foreign competition, changing work force demographics, and the onrush of new technology—national policy that discourages work force development seems completely out of order.

Should Congress not extend Section 127 of the Internal Revenue Code which expired Dec. 31, or impose regulatory disincentives on employers or employees, we can surely expect to see downturns in these trends for employer investment in the nation's human capital.

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BUSINESS MOST POPULAR ADULT ED COURSE

From the new *Digest of Education Statistics 1983-84* by the National Center for Education Statistics (U.S. Dept. of Education):

Number of participants in adult education	21,252,000
Percent of total adult population	12.8%
No of courses taken in adult education (top six)	
Business	8,564,000
Health care and health sciences	3,993,000
Engineering and engineering technology	3,654,000
Education	2,926,000
Philosophy, religion and psychology	2,377,000
Physical education and leisure	2,373,000
Arts: visual and performing	2,373,000

Income levels of participants	
$50,000 and over	7.7%
25,000 - 49,000	34.4
24,000 & under	54.9
Not reported	7.7

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ASTD National Report April 9, 1984

WHO AND HOW EMPLOYERS RETRAIN

Some findings from interviews with more than 300 human resource executives of Fortune 1500 firms (84% manufacturing) by ITT Educational Services, Inc.:

Whose jobs are most affected by the need for retraining in your organization?

Senior management	9%	Technicians	54%
Middle management	29	Other workers	24
Secretarial/clerical	40		

At your company, is retraining carried out by:

Existing personnel	29%	Some combination of the above	62%
Hiring additional personnel to conduct training	2	No retraining taking place	3
Training employees externally	3	Don't know/no answer	2

Although 62% use a combination of sources, they say they prefer managing their own training problems without outside intervention.

How likely would you be to rely on the training services provided by the following?

	Very or Somewhat Likely	*Unlikely or Very Unlikely*	*DK/ NA*
Outside vendors offering retraining services	68%	29%	4%
Industry trade associations	56	41	4
American Management Associations	28	68	4
Chambers of Commerce	19	78	4

With reference to outside vendors, for your industry, where does most worker retraining take place?

Public and private vocational schools	64%
Two-year community colleges	44
Universities	37
Other	28
Through correspondence courses	20

In your opinion, who should have the major responsibility for funding worker retraining?

The employer	38%
Private Industry Councils	1
The employee	0
Government	0
Unions	0
Some combination	60

94% of those surveyed do retrain workers, at least in a few instances, but presently, retraining is not the most consistently used solution for coping with workers' obsolete skills. Hiring new employees with the required skills tops the list. However, 74% said that most of their employees were positively inclined toward retraining, not resistant.

Among the ITT observations about the survey: 1. Business is not averse to retraining employees, although currently prone to replace rather than retrain and 2. employers and employees need to share responsibility for retraining.

More information about the study may be obtained from LAWRENCE G. LaBEAU, Director of Corporate Relations and Advertising, ITT Educational Services, Inc., 3500 DePauw Blvd., P.O. Box 68888, Indianapolis, IN 46268.

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ASTD National Report January 30, 1984

MANAGEMENT'S SHARE OF TRAINING DROPPING

Management Development, Organizational Development and Supervisory Training account for one-third of all training purchases in the United States, according to a new study from Hope Reports. Five-year spending on these subjects, however, has not kept pace with spending for other training topics. Revenues from off-the-shelf programs, custom-designed training and generic seminar presentations for these three subjects increased 88% from 1977 to 1982, while as a group, sales of 17 other topics rose 124% over the five years.

Five of the topics jumped more than 200% in sales over five years compared to the increase of 111% for all training subjects. The leading "hot" topic, based on ten criteria, is Data Processing Training, which ranked third of all topics in gross sales in 1982.

The full report is being released in two volumes, *Hope Reports U.S. Training Business*, Vol. I, and *Hope Reports Training Business Directory*, Vol. II.

Inquiries should be sent to Hope Reports, 1600 Lyell Ave., Rochester, NY 14606.

ASTD National Report February 27, 1984

EMPLOYEE TUITION AID SURVEY DATA

More than 96% of the responding companies in a recent survey had tuition reimbursement plans for their employees. The survey was done by JOSEPH P. O'NEILL of the Conference of Small Private Colleges with a questionnaire mailing to the Industrial *Fortune* 500 and the Service *Fortune* 500 companies. O'Neill's report covers 655 responses representing more than 17 million employees. Other findings:

26.4% required that the employee pay part of the tuition

At 130 companies, employees paid 10% to 25%

At 37 companies, employees paid 26% to 50%

No company required employees to pay more than 50%

Fewer than 30 companies varied the percentage according to grade received

Explicit limits on tuition reimbursement were reported by 45.3% of the companies. Of the 158 companies that stated dollar limits, the ranges were:

$ 200	to $ 499	10 companies
500	to 999	42 companies
1000	to 1499	50 companies
1500	to 2000	40 companies
more than 2000		16 companies

86% of the respondents reimbursed only upon "satisfactory completion"

60% give new employees immediate eligibility for tuition aid

A report on this survey of corporate tuition aid programs may be obtained from Joseph P. O'Neill, Conference of Small Private Colleges, P.O. Box 24, Princeton, NJ 08542.

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ASTD National Report July 5, 1984

96 PERCENT OF FIRMS STUDIED OFFER TUITION AID

Here are some findings from a new survey of Employee Tuition Aid Assistance programs in 65 financial institutions and 10 industrial and utility firms in the western U.S. The study was conducted by JOHN KILROY of the Valley National Corp., Phoenix, AZ.

96% of the responses offered tuition assistance
100% paid for undergraduate courses
98% paid for graduate courses
73% paid for work-related seminars
76% paid for non-credit courses
22% reimbursed at time of enrollment
66% had no dollar limit on reimbursement
62% indicated there was a tenure requirement for participation
87% required supervisor approval
20% offered loans for tuition
43% offered tuition aid to part-time employees

Among the study recommendations: Business and industry should establish a stronger link locally with education in the development of courses to meet the future needs of the work force and the community.

For more information: John Kilroy, Program Development Officer, Valley National Bank of Arizona, Headquarters B311, P.O. Box 71, Phoenix, AZ 602/261-1485.

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Washington Post July 25, 1984

William Raspberry

Only the Little Guy Gets Hurt

It wasn't that anybody set out to do a number on the little guy when Congress passed its tax bill last month. It just happened that way.

The legislators, looking for ways to make a sizable dent in record-level federal deficits, naturally focused on such things as abusive tax shelters. The big-time lobbyists, hoping to do something nice for their corporate masters, spent their time pushing for new and improved loopholes. The advocates of the poor worked to restore some of the welfare benefits that had been taken from low-income working women and also to force the states to extend Medicaid coverage to more poor families.

It isn't surprising, then, that no one paid much attention to a proposal dealing with the taxation of employer-paid educational benefits.

The effect of the little amendment that didn't pass is that workers whose employers pay all or part of the cost of their non-mandatory outside training may be subject to income taxes on the value of the employer's contribution. If your boss picks up a part of the tab for your computer course or your shorthand training or your law-school study, he will have to withhold taxes on the cost of the training—unless it is a condition of your employment.

In big-picture terms, it isn't that much of a deal—an additional $25 million to $40 million in federal revenues, according to Bob Craig, a vice president of the American Society for Training and Development.

But, says Craig, its heaviest impact will be on low-level employees.

Until a few years ago, the rule was that all employer-paid training was taxable to the employee unless its purpose was "to maintain or improve skills" in the employee's present job. Then in 1978, Sen. Bob Packwood (R-Ore.) pushed through an amendment that exempted educational benefits from taxation. But the legislation had a "sunset" provision that would render it void after five years unless Congress voted to extend it. Two successive attempts to extend it, the second coming during last month's debate, failed. The law now reverts to what it was before 1978.

But why is it harder on low-level employees than on executives who also receive educational benefits? The culprit, says Craig, is the requirement that the training relate directly to the employee's present job. Almost any training can be deemed essential to an executive's present job. (The only training specifically excluded from tax exemption is for "sports, games and hobbies.") According to Craig, the low-level employee is more likely to undertake outside training not for his present job but to improve his chances for a promotion. As the law now stands, that makes it taxable—even if the promotion never materializes.

"In fact," says Craig, "employers who have not withheld taxes since Dec. 31, 1983, when the Packwood amendment expired, have to withhold back taxes." They may even be subject to interest charges and penalties.

"What the law does is to penalize those ambitious low-level people who are trying to get ahead in their careers, who are trying to learn new skills that will qualify them for promotions," says Craig, whose Washington-based association is composed of people engaged in employer-provided education and training, from entry-level remediation to executive development.

"People at the lowest levels can relate very little of their training to exclusions for tax purposes. Executives can exclude virtually everything."

So why didn't Craig, whose purview is government relations (i.e., lobbying), lobby harder for extension of the Packwood amendment?

"You want the truth?" he says. "Everybody expected it to pass."

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Ms. OAKAR. Our last witness at this table is Dr. Amitai Etzioni, who is currently serving as a university professor at George Washington University in Washington.

In the past Dr. Etzioni was a senior advisor for the Carter/Mondale White House and served as a guest scholar at the Brookings Institution. For many years he was a professor of Sociology at Columbia University. He also is a contributor to the New York Times and Washington Post.

Thank you. We are glad you made it. Please proceed.

STATEMENT OF AMITAI ETZIONI, GEORGE WASHINGTON UNIVERSITY

Mr. ETZIONI. Thank you very much. I appreciate the opportunity. When I was told yesterday that I will have a chance to join the panel on behalf of ITA, I dropped everything and dashed over, because I know if Pat Choate comes up with something new, it is sure to be on the side of the angels.

Now, let me say where all the angels dance, as I see it. If I had to put it all in one sentence, I would say that the item of legislation, and the idea behind it, would begin to correct major imbalances we have currently in our total economic policy. We have, over the last years, introduced a large variety of measures through the Tax Code which are obviously government manipulated to direct the economy into very specific directions, especially trying to make people save more and invest more.

The IRA is an example of this. The whole supply-side theory goes to the notion that you make people want to save more and be more productive. Extremely little has been done on the side of human capital.

I do not disagree with some of my economic colleagues who believe in such a never-never-land in which there are no exemptions, no regulations, the perfect competition model, that in that world, which by the way never existed in any society at any time, if we would achieve that, we would also not want to have an ITA, because it does distort the perfect distribution of resources once you had it.

But this is not the world we have or will attain or can achieve. In effect, to digress for one second, to an extremely important technical point—once you move away from the perfect model, by any one step, you have to play by a completely different set of rules called the second best situation.

That means technically once you have a tax system at all, because that already distorts the beauty of the completely free market, because it introduces other considerations—if you only would pay for defense—then you can no longer say, for instance, that introducing one more step of deregulation brings you closer to the perfect market.

In effect, the world is not arranged in such a beautiful way of a straight line—there are valleys and hills on the way to the Garden of Eden. And often as you remove one barrier, you may get a less welcome situation for all concerned.

So in dealing with ITA and the other ideas like this in the context of our existing system and not in some theoretical nirvana, in

that context, we have neglected the human factor, human capital, and we have excessively emphasied the capital factor.

Now, that would be undesirable in any situation. In the situation we find ourselves, it is particularly damaging. And I would like to take a moment to explain that.

If anything, we should be erring in the other direction concerning ourselves more with human capital and less with capital capital. That is not obvious. I would like to take a moment to explain that.

The basic reason is that, first of all, we are short of capital. We are not short of human resources. But there are people who claim otherwise, who assume we have a hermetically closed border, and, despite recent pending legislation, I don't think that is exactly in the cards.

So we have to assume a continued flow of immigration, and, therefore, we do not need to worry about premature aging of our labor force, the way people calculate that if you disregard immigration.

To go back to the main point, the need to rebuild the infrastructure of the country, another idea of Pat Choate, and to some degree of myself, tried to emphasize—it gained in popularity, now it is a little out of the headlines.

We need to rebuild our basic capital stock, from steel mills to assembly lines, from ports to bridges. And we have not increased our saving rate.

So as a result, about the safest prediction you can make for the next 10 years is we are going to be relatively short of capital. The best way it expresses itself technically is in the high price of capital, the high interest rates.

All that high interest rates mean is that you have to pay a lot for somebody to loan you money. And even if this present swelling will disappear after a while, nobody expects them to go back to two or 3 percent interest rates.

So it means for the rest of this decade at least we should assume expensive capital.

Now, that means that you want to put more emphasis on other resources. There is R&D and human resources. And, of course, that deeply is connected.

To put it very strongly, we used to scoff at underdeveloped countries or developing countries such as India when they used to build steel mills with baskets rather than with heavy duty equipment. We said these people, don't they know, it goes quicker with a machine. We are discovering now the same truth.

If you are going to invest ever more in equipment, we are going to have a crisis on our hands. In effect, we are going to end up paying for unused human resources in other ways.

What we need is to be sure that we employ our human resources to make for a more balanced economy and more balanced society. That is the principal contribution of ITA, as I see it.

Now, if I am allowed for a moment—I know Congress is well organized by committees and subcommittees—I would go a step beyond that. I would talk about education IRA's, because the situation allows you to put aside money for the education of your children—we can argue if it should be for private schooling or for col-

lege, and then for training later—it should go for any enrichment of human capital.

The reason I say that is because there are affluent members of society who have access to lawyers and accountants who can make arrangements which amount to tailor-made educational IRA's for them, and the question is, Why shouldn't the rest of the members of society, with somewhat more convenience and less cost, not have the same resource available to them? That is, from a fairness and social distribution viewpoint.

Again, from the economy viewpoint, it is to make the same point. We need to provide incentives for people, to put resources into educational levels, including training and retraining.

Thank you very much.

Ms. OAKAR. Thank you, Doctor, very much.

Doctor, let me just introduce one of the members of our subcommittee who is a distinguished member from Michigan, and an original cosponsor of the ITA bill. Do you have some questions?

Mr. LEVIN. I am sorry. Because of another committee meeting, I missed the first part.

I take it there was some discussion of the point raised by Mr. Craig. But let me just ask again, and if it has been totally covered, just say so, if not, please comment on it.

His comment that ITA's—it is on page 3 of his testimony that it would appear entirely possible that higher income people would use it as tax shelters, not retraining, and at the same time lower income people would be less likely to participate voluntarily because of limited discretionary income for that purpose.

And second, on this point, in a related way—I would like to ask Mr. O'Keefe—your judgment as to how well JPTA has been working. You commented on that briefly. I think the figure you used was 55,000.

Mr. O'KEEFE. 65,000—the first 6 months of this fiscal year.

Mr. LEVIN. And if it is working well, why not, as a major reinforcement of the whole retraining effort, multiply that program 10 times? So those two questions I think are interrelated.

Mr. O'KEEFE. Let me go to the JTPA question first. I think that is more in my domain.

Eighteen months ago we did not even have a dislocated workers program on the books. We now have approximately $400 million in that system, when you take into account what was appropriated last year, and for the 9-month period, and the $223 million that became available as of July 1.

That is a substantial amount of money for a fledgling institution to absorb. From where I sit, the experience of past programs is that one of the most prevalent dangers to those that begin to show signs of success is swamping them with too many resources, so that the system doesn't develop in a coherent pattern, but instead commits itself to consuming those resources.

And we have seen that before. And I think that is what argues number one for not increasing the funding too dramatically, too rapidly.

I think the second thing is that we have had a very successful initial period with Job Training Partnership Act generally, both

with the programs targeted to the economically disadvantaged and with the dislocated workers program.

Let's recognize, however, that that is only the first 6 months. We are still learning how to run a major training program.

To go back to the tax shelter concept, I think others are going to have to speak to that who are more familiar with it than I. But as I understand it, even creating a shelter for individuals who have incomes of $20,000 a year or $25,000 a year—and that is what we are really talking about, people in middle-income brackets—is not for naught.

Even if that money was just set aside and not used for retraining, it increases the savings pool, it encourages savings at a very time that we need it.

It would make available to the economy generally increased capital. The fact is, though, that people would then draw it out as they needed it to refurbish their skills.

The turning over of jobs in this country is enormous. All of us are going to change careers two or three times in our lifetime. Very often not in traumatic ways; very often it will be by self-choice; we will move on to a new employer.

But those funds would be there in a way that they are currently not.

Mr. LEVIN. Maybe Pat Choate would like to comment. I know you have handled this question many times. But I think very much remains in issue.

Mr. CHOATE. Well, I think it is very much of a relevant question. But I think some of the information that we have this morning would suggest very strongly that while there will be many people in middle income brackets and upper income brackets that will take advantage of this program—and I might also say many of them will need to take advantage of it because many of them are going to be displaced in the years ahead—as Mrs. Johnson's testimony indicated, many people who are taking IRA's make under $30,000.

Specifically, in her testimony she made the point that based on IRS data, that of the 12 million households who currently hold IRA's, over 5 million of those people make less than $30,000 per year, and that is a household income, which may mean two people working.

Now, at the same time it turns out over 8 million people are in the range from $15,000 to $50,000. Again, two people working. So what you are really seeing is that for large numbers of middle income people and even lower income people, the IRA offers really the only tax deduction in an imperfect tax system they have.

I would like to make two points on that. One is people are saving although they realize they are going to lock those IRA's up for 30 or 40 years, and they are still doing it. If they realized that they could use that money through the ITA mechanism, I think you would have an even larger number of people that would be willing to participate. I think you would have a larger number of people that would be willing to participate in what I would call the Training IRA, as well.

There is another important piece of information that was presented by Mr. Craig—and I have to say raw data is to economists like good caviar is to a gourmet, you get very excited about it.

And the survey he presented—out of that survey 600 companies, HR [human relations people], and these are people that have a major decision in what their companies do, almost 2½ to 1, 70 to 30 percent, they are saying that they think that the IRA provisions need to be changed to permit savings for training, and you had 70 to 30 percent—these companies said they would favor the ITA legislation.

I read that as an implicit endorsement by 600 personnel people. So if you take both of these factors and put them together, I would say you would have good participation in this program.

And I think the data fairly well suggests that it will reach down and touch a broad base of people, not just upper income people.

Mr. LEVIN. Let me just ask you one last question. If you had to guess as to what the rate of use would be for family incomes from $10,000—household incomes—from $10,000 to $40,000, what would your guess be as to the progression under a ITA system?

Would it be the higher the income, the more the use—just a guess. And by what kind of degrees?

I think some people say that because of the issue of disposable income, that the higher the income, the more the use, and perhaps geometrically not in a regular mathematical progression.

Mr. CRAIG. I think there is another factor. It reflects our committee discussion.

The higher the income, the more skilled the person is generally speaking. The lower the income, the lower the skills.

By and large, the higher the skill of the person, the more likely some employer is going to invest in retraining that person. The lower the skill, the less likely the employer is going to want to invest in that person.

Mr. LEVIN. Would you agree with that guess?

Mr. CHOATE. Well, what I would guess is that it becomes important to make a distinction between the percentage participation and the absolute numbers of participation.

What I would think that you could anticipate, it would almost be in effect like a normal curve, if you are talking about numbers of people—I would anticipate what you would find, family income of $10,000 or $15,000 you would have a small number of people, but as you moved, as this data seems to indicate, through the $15,000 to $30,000 range of people, that you would be able to anticipate a minimum of at least what are participating in IRA's now, which would mean at least 3 or 4 million people.

I would anticipate because people would realize if they needed their money, they could get their money out and use it for these purposes, that you would see a substantial increase in the number of people that would participate.

Then, as you move on up in the income brackets, I think you may find as you move to $70,000 to $100,000 income levels, you would find people perhaps less inclined to take it.

But again, that is the market operating perhaps as the way it should, because they have other resources to draw upon. What you are really trying to do is get that range of people that will not have

personal resources to draw upon. If they do draw upon the personal resources it harms them in a long-term sense to have those funds.

So I think that these programs really touch upon the core group of people that would be most in need of the funds.

Mr. ETZIONI. May I speak to this point?

I would expect a rather unusual pattern will arise here: Not the usual pattern where the more affluent you are the more you benefit. The reason is the lower your income, the more likely you are to seek retraining or seek to change your job.

Just to be very simple minded about it for a moment, if you are a successful lawyer, you are very unlikely to go to computer training school. But if you are a displaced steelworker, you are much more likely. And so on.

So there is a factor here which would tend to correct for the usual tendency to lean the other way.

Mr. LEVIN. My time is more than up.

I think that raises one basic issue. If the lower the income, up to or down to a point, the greater the need for retraining. Also, the less the disposable income, and also the less the benefit from a tax shelter, if you want to use that term—which term has—maybe we shouldn't use that for programs we like—but if those variables are operational, I think they indicate that at the very least an ITA program has to be complemented by an expanded set of other programs, because it would not reach—if your notion is correct—many of those in most need of retraining.

Mr. ETZIONI. Speaking strictly for myself, I very much agree with you. In the best of all worlds, the employers and the State and Federal government would contribute to ITA.

In the end, all this is is a tax-incentive scheme, because we don't dare to talk about direct public funding of the same needs.

Mr. LEVIN. Your last comment to some extent, I think, undermines your earlier testimony in terms of the way we should go in our society. You are really saying what we need to do is to not only complement an ITA system with other programs, like the recently enacted JTPA, but we also need to think of combining within an ITA program some public funding incentives.

Mr. ETZIONI. What I am trying to do is not to be completely academic. In an academically beautiful world, you would say people have a need, it is in the public interest for it to be treated, they have been suffering due to forces beyond their control, technological change, because we defend the Japanese, et cetera, that the public tilt should be available to them.

But I don't foresee in the next 10 years that we can go massively in that direction, and it is massive. So we turn to the context in which tax incentives have become popular and available for every purpose but ours, to say, let's at least begin to correct the imbalance by introducing tax incentives for this purpose.

Once you have that in place, the question is can you graft on it some of what you would like to have in that beautiful world. If you cannot have direct major financing of training from the public tilt, maybe you can have matching funds.

Mr. LEVIN. Let me say, I think next year tax incentives are going to be much less popular than they have been in the last few years.

Mr. ETZIONI. Maybe we should split the IRA's into half—half IRA's and half ITA's.

Ms. OAKAR. Pat.

Mr. CHOATE. If I may follow up on Professor Etzioni's comment—it seems to me what it becomes necessary to do is divide the training challenges into some parts here. There are some parts best done by the private sector. That is, for those people already at work. I think the proposal to give a tax credit, in effect, says to those firms if you need to invest, we want you to invest, we want you to choose, we are going to give you an incentive to do that equal to what you have for capital investment, for R&D, and you have to put up $3 for everyone.

I think that makes sense. We have another set of training problems to deal with the economically and culturally disadvantaged that the Federal Government, I think, very responsibly has stepped forward and said in the Jobs Training Partnership Act, this is a national responsibility, a national challenge, and public funds are put up to deal with that.

But then, there is a series of other challenges like the displaced worker problem, and the issue is really one, at least under the ITA concept, how do you go about sharing that cost between employers, between workers and the society as a whole?

So what one is really doing in putting together a national as opposed to a Federal training strategy is to say how do you deal with these parts in a way where you can let each of the participants make that contribution which they are best at making and, yet, at the same time build up a mosaic of actions which deal with the whole problem.

So in a sense, I think that is what it does. And I think it winds up being the most efficient way of going about it.

Mr. LEVIN. I agree with you completely. Thank you very much.

Ms. OAKAR. Thank you.

Let me just ask a question in the form of a comment.

Mr. Craig, in your survey you talked about a concern that this could be used as a tax shelter, $250 or less, by those in the middle or upper income. I am not sure I think that is the greatest tax shelter that we have seen.

But I would like to make this comment because Mr. O'Keefe said something that I agree with, and, yet, when I think of my own district, it is not quite as true as it might be otherwise. You talked about the fact that there are no predictables in terms of who is going to be unemployed.

In my district, a lot of the people unemployed were those middle income people who may have taken advantage of this kind of program. They were the steel workers and the auto workers who were middle income. They lived in many cases in the suburbs of Cleveland, in very nice homes, and were just about ready to finish paying off their mortgage.

Many of them are men who are over age 50. So they are the kinds of people that some of our people in your surveys are so concerned about taking advantage of that so-called tax shelter.

Now, these individuals in some cases have lost their homes, haven't had a job for 3 or 4 years, and cannot find a job. There is a form of age discrimination that goes along with the whole issue.

Our Aging Committee, incidentally, found that the highest percentage of unemployed in the country were people between age 45 and 55. We are seeing that those individuals who once were middle class are the new vulnerable people in the country. They have really lost a great deal. In addition, you have certain physical and mental abuse that are a result of unemployment.

I guess my response to that kind of comment might be to take a look at that middle income person who might take advantage of this program, who would never have dreamed that after working 20 or 30 years in the steel mil. that he, in this case, would have lost his job, and that this was the one and only career that they had as a goal, and this was the lifestyle along with the employment style that they had chosen.

I guess that is an intangible when you think of tax shelters, and who takes advantage of them. You think of the here and now. What we are talking about is the future and what might happen to that very same person who is above the national average in terms of salary.

They have worked for many, many years. These are the people who I have in mind when I support a bill like that. I don't know how you respond to that.

Mr. CRAIG. First of all, don't let me appear as if we have all the answers on this. We are very hesitant about this conclusion.

This is the conclusion of our discussions. We don't have data which prove conclusively this or that. One caution, though. I have a concern when we use the auto and steel workers as a metaphor for the rest of the country because I don't think that is necessarily true. There are lots of special aspects to the auto workers situation—particularly labor contracts.

They now have opportunities to be retrained under the labor contract they have, even though they are displaced. This is a very interesting kind of precedent, which I think we need to examine, too, in labor/management relations.

I am hearing that more and more of the 45-to-55 age group—controllers, for example—are particularly troubled with unemployment. They are being dislocated through technology. What are they going to do?

We are not firm in our conclusions as yet. We think the data we have indicates that it is an issue to be explored.

Ms. OAKAR. Let me then take another tack. We know that there is an increase in service-oriented jobs, and that most of those jobs are filled by women. This goes to your statement, Pat—both Pats—in terms of flexibility and unpredictability about the labor force. While I can identify in my own district the very typical individual who is unemployed, who has once been middle class and now somewhat destitute, I am concerned that we are spending a little more time on looking at those service-oriented jobs and what that means for women in terms of retraining, because we know that these are the lowest paid jobs as well. That is why some of us are concerned about pay equity and issues of that nature.

How do we address the increase in the numbers of jobs in the service sector and the needs of women in terms of the whole area of retraining who are more and more going to be in the work force?

Seventy percent of all women today work part time. How do any of these programs or future programs address that particular need?

Mr. CHOATE. Well, I think, first of all, it goes back to your opening statement. What one finds is, of course, a large number of women working, with children, with low-income jobs.

Many of these service occupations, as you, I believe, very correctly stated, will change. These workers will need to retrain, and they will need, I believe, both income assistance, which the ITA gives by linking it to the unemployment insurance system while they go through that training and, at the same time, they will need the tuition assistance.

It is the $1,000, as you were talking about, in the programs in Cleveland. It is not a lot of money until you don't have it. And then at that point it becomes all the money in the world.

And so it would address that problem. Then there are the issues of providing child care services for the people in retraining. I think some of the points that Mr. Craig made earlier are also useful on the retraining, and that is to take a look at the tax provisions so that when a worker invests their own money, while they are even on the job, to take retraining in some other occupation if they can see change coming, that they be able to deduct that.

It seems to me to be only fair if a firm can deduct the expenses involved in changing a line of business to adapt to change, that a worker be able to do the same thing. And our present tax codes don't do that.

So it seems to me there is a whole series of these kinds of steps that can be done. And that women will be beneficiaries, as will many other people. But I think they will be disproportionate beneficiaries because they make less money.

Mr. O'KEEFE. May I just make a couple of remarks here?

I think we have all commented, and certainly the members of the panel have commented, about the fact that we cannot afford to think about these things as pigeon holes. There is not one solution to all of these problems.

I think the second thing we all need to recognize is that, in the changing attachments of females to the labor force, we are both part of and witnessing probably the most significant change in labor economics that has ever taken place.

Our economic institutions evolved in an economy where the assumption was that one partner stayed home and the other went to work. That is changing dramatically and rapidly. There is an awful lot of change going on in our policies, and our policies have to begin to accept the fact that some of the underlying premises regarding labor force participation have been called into question; we have to look at those.

We have 105 million jobs in this economy. We cannot lose sight of that. Many of the service jobs pay very well. There is a certain portion of those jobs that are at the lower end of the wage spectrum; but other service jobs, particularly those that are associated with high tech, do pay very well. We have to keep in mind that those individuals are going to need to replenish their skills and basic competencies in those areas.

With respect to increased female labor force participation in the United States, I think we cannot lose sight of the fact that this

kind of retraining initiative makes sense in that context. Many individuals, either the husband or the wife, will for a while want to withdraw from the labor market while their children are in their early years.

And at the point that they seek to reenter the labor market, there will be a discontinuity. The skills with which they exited will be somewhat rusty, perhaps outmoded. So this kind of thing, an ITA, other training programs, would permit them to regenerate their human capital.

And I think the last point that I would make is the very fact that as middle-America begins to feel vulnerable, middle-America is likely or possibly likely to take some short-sighted political steps, to try to head off that vulnerability.

The long-term consequences for national income, for national security, are going to be perverse. And so what we have to do is look at ourselves and realize that we are trying to balance our risk and trying to do so in a society, in a political system that emphasizes free choice, and things such as ITA to the extent that they remain voluntary, and permit workers and employers to arrange a compact, are things that we should encourage.

And I am glad to see that everyone here, while disagreeing around the margins, continues to push on that kind of flexible approach.

Ms. OAKAR. I agree with you about the women in particular who go in and out of the labor force when they decide they need to go back in the labor force—very often the skills they once had that paid a reasonable amount, are not enough.

We saw at the Polaris Center in Greater Cleveland women going back for training and instead of learning typing, they were going into computer science.

Those who were in the program had a special grant to be in the program. If they had not had that small State grant, they would never have been able to go into that program.

I wanted to ask Mr. Craig and Dr. Etzioni just one question. You mentioned the fact that several labor unions have training programs. These unions include the Communication Workers and UAW. Companies like Ford and General Motors also have training programs.

Dr. Etzioni and Mr. Craig, wouldn't an ITA be useful for union members, for that kind of training program as an option—would that be something helpful for them, for their futures, as well?

Mr. ETZIONI. I don't immediately see why it would benefit union members more than nonunion members. But if you allow me just to use the point for a moment to speak to a very related one. In many other industrial societies, they have a tradition we don't have. And that is that employers will train employees not necessarily for themselves.

If you take a youngster and train him in marketable skills, you contribute to the pool available to all corporations and you benefit the country and, ultimately, yourself.

We have more tradition that a corporation seeks to train people for itself and is very reluctant to contribute to the pool of training, and in effect, will often go to great pains that if you train somebody, they will be under contract for many years.

I would lean to a greater employer contribution, because that is your opportunity to contribute to the total welfare. I am not talking about the society at large, but the economy. Because instead of just training people for yourself, you improve the pool all corporations draw from.

That will have a feedback effect on the issue of social justice, because let's assume for the sake of argument that the corporation will contribute $500 a year to the ITA, that would mean very little to the person who makes $100,000. But to the person who has a relatively low income, these are very important marginal dollars. The larger the employer contribution, the fairer the system becomes.

Ms. OAKAR. Mr. Craig.

Mr. CRAIG. Yes. I will combine that with your comment on the service industry. For example, I just had a call yesterday, the Bank of America apparently has some 2,000 to 4,000 surplus employees because of changes in data processing.

These are not very high level people. Their policy has been they don't lay people off, they only reduce the work force by attrition. They try to retrain their employees in the new technologies.

But this quantity of people is really testing the limits of that policy. Here is a case where it would be helpful if we had some kind of Federal policy that gave a tax credit to employers or maybe even a special tax credit for displaced workers like this, to retrain these people not only for jobs inside—but also to retrain them very effectively with real workplace training for other jobs.

We could use more of these workplace kinds of circumstances for retraining. Regarding the specific question on labor—I don't think the ITA is really needed very much by organized labor where agreements provide for doing that within their own context. Now, we have that, of course, with UAW, CWA, National Telecommunications Union, in the auto and telecommunications industries. These agreements get at training the organized work force, even though they leave the company—as well as retraining people within the company before they get displaced.

That should be encouraged. But it may be a matter of negotiation rather than a Federal ITA kind of program.

Mr. ETZIONI. To clarify a very small difference here. By one system it is haphazard, because some corporations will do it and some not.

Ms. OAKAR. It is very, very minimal. I didn't mean to give you the impression it is a wholesale, blanket training program across the board, because it is very minimal. In some areas they have it, in some they don't.

Many, many workers are extraordinarily discouraged when they are left high and dry.

Mr. ETZIONI. Only one out of five workers is in unions. Many unions do not have it. That would mean for the corporation to control the training program.

In the other system where every employer is mandated to make a contribution into everybody's ITA, the persons themselves can choose what retraining resources they want to use.

Mr. CRAIG. It is only a year or so old. We hope to see it grow. And the corporation does not control the training. It is a joint endeavor.

Mr. ETZIONI. When you talk about the example of the Bank of America——

Mr. CRAIG. That is not a union situation.

Mr. ETZIONI. True; but if you have a model, given more resources, the Bank of America could train people not just for itself, but for the market. That would be then a corporate controlled training program.

And I would prefer for the employee to be able to choose where they want to get retrained.

Mr. CRAIG. Let me tell you another item from the survey. We asked the question, do you think employers should be concerned in retraining those who have been displaced by technology, foreign competition and other factors?

The response was 92 percent affirmative—and these were private sector managers—they said for both inside or outside jobs.

Ms. OAKAR. Let me go on to Mr. Vento.

Mr. VENTO. Thank you.

I am late. I apologize for it.

Just a few observations and maybe a few questions. The magnitude of this problem is very significant. We had hearings in Minnesota, the Northeast-Midwest Coalition—on a topic similar to this. The testimony we had suggested about half the education money spent was spent in private sector.

That is to say, private companies actually are spending a heck of a lot of money in terms of retraining. Then that comes back to the types of proposals that we have here before you and other suggestions.

I think we all agree there is a problem. The question is how do we best go about doing that. I guess the best and most efficient way would be to take your tax revenue and apply it to the problem in terms of creating a training program or retraining or educational program to address the issue.

That is the most efficient—that is, if you believe that the National Government can accomplish or State Governments and Federal Government can do that.

Now, of course, we throw in here all of a sudden the idea of individual choice, letting the individual make these particular decisions and/or letting the companies and, therefore, they then have the resources, the money retained either through tax or other incentives that we have. They, of course, can still engage those decisions, I assume, by giving them money directly, but we choose to do it more indirectly now, through mechanisms such as tax and so forth.

That is to say, there has been, and this is the direction we have gone. Unfortunately, the CETA program has been cut back to about half in real dollars of what it was. Now we call it the Job Training Partnership Act. I am a sponsor of this legislation with Congresswoman Oakar, on the credit basis.

But the point is the magnitude of the problem—what is the cost to train a worker. Education is very expensive. We talked about people who have Ph.D.'s either from private or public institutions—I think a conservative figure in some sort of retraining experience for someone being laid off a manufacturing skilled job, a

limited skilled job, probably is $10,000 to $20,000, in terms of what they need.

Obviously, unemployment doesn't do that. That 26 or 39 or 52 weeks, depending upon the severeity, doesn't get you from A to B. It doesn't get you the retraining.

At one time, apparently, it did. And in a more competitive world where retraining—105 million people in the work force today, it means little. I would like to see another 5 or 6 million in the work force myself.

But the fact is that those folks on an ongoing basis need retraining. So we are probably spending a great deal of our total GNP, and so forth, really touching around the fringes, saying we are going to give this ability through the Tax Code.

I think we are only operating on the fringes of it. I guess it is better than giving taxes for no reason. But my question is whether the IRS really has expectations that that is going to guide or bring about the right development in terms of training that we want to do.

I guess my inclination is that it is pretty ridiculous, that you expect that to occur. I don't think it will. But I do think—maybe through an insurance program, giving some autonomy in decisionmaking, not without a heck of a lot of counseling.

I don't know how many of you have been involved in telling students they cannot go to school and get cosmetology training because we don't need cosmetologists or hair dressers. Or at one time we thought we didn't need as many nurses.

But it is not very easy. These people keep coming out of schools. They go to the marketplace and cannot find jobs. That is what you are up against.

The idea behind all of this is good. That is to say, in terms of letting people have access. The fundamental question is, Where are we going to come up with $10,000 or $15,000 or $20,000 and when? Wouldn't we be better off with some sort of insurance program to accomplish that?

Are any of those available privately? Should the Government be setting it up? I think we have to look at the money we are spending in unemployment and other programs, as well as some of the direct spending programs.

Clearly that would be the most efficient way, rather than having everyone say I have to protect my security in terms of the job by developing one of these accounts. I think it would be too little and too late, and not really on a prudent basis. It would not accomplish what we are trying to do.

Pat.

Mr. CHOATE. I think I agree with you—when one takes a look at the present system, or nonsystem that we have. And I think in beginning to dissect it, it becomes important to break it into two parts for the workers.

One is for the worker that is employed, that is on the job, whose employer is facing change, as most employers are, and that worker will need some training to keep pace with the demands of the job as the job itself changes. And I think the whole idea here is to give the firm greater incentive to retrain that worker rather than just

dispose of that worker and try to find somebody outside that has the training.

I think the national policy that is in place, that gives firms incentives to invest in capital investment and R&D, is a good system in the sense that it does seem to stimulate more investment. And more importantly, since the firm is putting up the $3 or $4 for every dollar the public sector is, through tax expenditure, we are pretty well guaranteed the firm is going to make a prudent investment.

In this kind of circumstance, with someone on the job, I think if we were to give equality to investment and training with the investment in capital and technology, we would see more training.

So I think that is one part of the picture. As to the second part of the question, which is one which I do not think public policy has been adequately addressing, is what do you do with a worker displaced that no longer is affiliated with an employer. In that sort of circumstance I think you are correct in your point that we are talking about substantial quantities of funds, and these funds come in two ways.

One part of the funds is in the direct training costs, the moneys that are paid in tuition, the funds that are used to operate the schools. And the second part of the funds are those funds that are involved with the workers' income during that period that they are unemployed. That is a good chunk of the $10,000.

And I think that these particular pieces of legislation that are being considered by the committee very forthrightly address that by, in effect, mandating that we expand from 13 to 50 States and eliminate the requirement that a person that is on unemployment insurance cannot take training. If that is done, that will go a long way in better using many funds that are already being expended to ensure the people have the money to pay their mortgage, to buy their groceries, to pay for their automobile during that training period.

The private sector and the Government put up a lot of money in that anyway. They put up $30 billion last year, $18 billion this year. So it is just making wise use of a lot of money.

Above and beyond that there is the question——

Mr. VENTO. I don't know. If you could convince people of that, they would be willing to make that change. One of the fundamental things about UI is you are available for work.

I was trying to do blue collar work and get a college education. I had been working nights and could not get unemployment insurance because I was in college during the day. There are a lot of other people that face similar types of dilemmas.

Mr. CHOATE. There is the need for the better Jobs Bank, et cetera. But if these series of actions are put into place, I think we would get to the point where you would build up the moneys, better use that which you are already expending, and have sufficient flexibility to at least do a better job of what we are already doing.

Mr. VENTO. I think that the savings account idea is fine as far as it goes. Unfortunately, the types of problems are that no one ever expects they are going to be laid off—if they are a butcher or a

tailor, they don't see the computers coming down the road to cut up that beef or something. And they end up losing their jobs.

Just as an example, in my district, the place I was working while I was in college, many of the same people there are still working there. It was a Whirlpool manufacturer of chest freezers. They announced a few months ago they were discontinuing that. People discovered if you leave things in a chest freezer for a year it doesn't taste so good. So several hundred guys don't have any accounts.

The accounts are good. But I don't think we ought to kid ourselves—and I think we want to try to provide self-sufficiency for people in putting money aside. I don't think we ought to kid ourselves that the National Government or the Federal Government will get off the hook in this case. And if we could convince employers really they ought to permit training. In other words, they are looking to reduce those costs, not to provide more flexibility.

The best way to reduce them is to say if work is available you have to take it even though it may be for a short time. There are a lot of problems to overcome. I hope this can make a contribution. But it has to be part of a larger program in which you understand that a lot of workers will not be able to save anywhere near the type of money they need for training. Just like most of us have benefited greatly from public support, and most people in this country that have been educated have benefited. So I don't think there is anything very unusual about it.

Also, understanding the private sector, private corporations and the amount of money they are spending on education today, and that that is going to have to continue. And I think you are right. The only question is whether or not there is any leverage left in the Tax Code to get the type of performance out that we want to in light of some changes that have been made that are thought of as being for some reason sacrosanct.

I hope that that can be revisited and that we can look at that on a more intelligent basis. I get a little frustrated trying to put everything through the Tax Code in terms of policy. It is not the most efficient or effective way to do it. It greatly distorts our ability to run Government. In the end it doesn't do the job that we are trying to do.

I thank you for your indulgence, Madam Chairman.

Ms. OAKAR. Thank you very much. I want to thank the panel very much.

Our last witness is Dennis Carey, the secretary of labor of the State of Delaware.

We are very anxious to hear your experience in your voucher-based training program which you use as a form of ITA.

STATEMENT OF DENNIS CAREY, SECRETARY OF LABOR, STATE OF DELAWARE

Mr. CAREY. Thank you very much.

I have followed actively the ITA legislation since its inception. I would like to cover three points. First, change is inevitable. Point No. 2, current systems are not facilitating the necessary adjustments for that change. And point No. 3, new systems are springing

up across the country because of the deficiencies in existing systems.

There is little agreement on the economic importance of the dislocated worker problem. Debate centers on whether or not displaced workers encounter more difficulty in finding work than other UI recipients, whether the number of displaced workers, ranging in estimates from 100,000 to over 2 million, justify new policies and programs, and whether economic recovery will solve the problem anyway.

Regardless of the outcome of these debates, however, we do know that the economy and the nature of work are changing. The forces of international competition, which affected 8 percent of domestic markets in 1960, as opposed to 80 percent today, and the introduction of new technologies are producing new market opportunities and eliminating others.

I am sure you Congressmen have been faced with the inherent results of those pressures—protectionism, domestic content legislation requirements, and demands for plant closing legislation.

The shifting job market is intensifying pressure on today's work force to be more literate, more trainable, and more flexible. The issue for debate it seems to me today is whether existing systems facilitate such adjustment or not.

Point two. the public school system, the employment security system, and the new job training partnership program are the most significant State-supported vehicles designed to assist the work force in making adjustments in the economy. Their effectiveness in providing meaningful adjustment assistance is in doubt. Public schools, for example, have been increasingly under attack for not preparing students for tomorrow's skill requirements, and not teaching job search skills.

The employment security system was established to deal with cyclical, and not structural change—including the employment service, unemployment insurance system, and 22 grant-in-aid programs to facilitate worker adjustment. These programs are geared to hold workers over difficult times rather than provide meaningful readjustment through retraining and counseling.

Between 1976 and 1980, over $18 billion was spent on extending UI beyond the normal entitlement period. Yet, only $53 million of the total, or less than one-half of 1 percent, was spent on training and relocation.

In legislation to further integrate UI and retraining—S. 1799—Senator Sam Nunn stated that,

> In fact, a very small proportion of those collecting UI benefits are enrolled in training programs . . . according to the U.S. Department of Labor, of the 7 million UI claimants across the country registered with the employment service at any time during fiscal year 1982, only 17,680 or one-fourth of 1 percent were enrolled in training.

While the JTPA provides for a limited number of retraining opportunities, it does not provide allowances for trainees to live on.

Due to deficiencies in the current system, new initiatives have sprung up over the Nation during the last 2 years, including collective bargaining agreements at Ford, GM, and AT&T in which outplacement assistance, including retraining opportunities, were provided.

At the State level, California and Delaware have launched efforts to dedicate a portion of unemployment insurance tax collections to training accounts. California took advantage of a surplus in their unemployment account to dedicate a tax for training while reducing their net tax burden on employers. Most States' unemployment accounts are in the red, however, and suggesting additional employer taxes for training is not popular.

Delaware, a debtor State, has discovered a window of opportunity in that when we repay the Federal Government this October, a 0.6-percent FUTA tax penalty will come off. The DuPont administration proposed legislation which dedicated a portion of the reduction, 0.1 percent, to establish a permanent training fund.

The Delaware Private Industry Council established under JTPA would be responsible for the selection of recipients of grants to ensure appropriate use of the funds. The tax increased the total number of dollars available for JTPA by 32 percent. The tax is designed to help support three employment and training initiatives: One, school-to-work initiatives; two, industrial training; and three, dislocated workers.

The important element, in my judgment, in looking at the ITA is that the ITA principle goes even further than State initiatives in California and Delaware. It would require employee contributions, as well as employer contributions, and also provide tax incentives for investment and training. It would, at the urging of some, extend the same kind of tax treatment to job training as is currently provided for private investment, research and development, plant, and equipment.

A voucher-based system modeled on the GI bill would have several key elements, which Pat Choate described briefly this morning, that would be necessary to ensure efficiency and accountability.

First, the worker is involved in the adjustment decision and has a financial stake in the process.

Two, the system is comprehensive in that it provides coverage for anyone who is displaced.

Third, the system is tied to the receipt of unemployment insurance benefits, thereby assuring support during the adjustment period.

Fourth, the system provides for early intervention and flexibility.

Fifth, the system provides for assured financing.

There are several variations on the ITA theme now before the Congress. All recognize the critical link between productivity and change and current system failure to encourage investment in training and other meaningful readjustment assistance. These should include job search assistance, job development, counseling, relocation assistance, and labor market information as well as training.

It has been well documented that job search assistance is a much more efficient and cost effective means of facilitating adjustment in the work force. And I believe that the legislation should certainly, as Bob Craig indicated this morning, reevaluate the definition of training under the ITA legislation to incorporate other means of facilitating adjustment in addition to training.

And that basically concludes the thrust of my remarks. I would like to say that I appreciate the opportunity to be here this morn-

ing. I sincerely believe that the most effective means of facilitating adjustment for the unemployed is to use the system that is currently in place—that being the unemployment insurance system—to target dollars through that system and retarget them for meaningful training assistance.

[Mr. Carey's prepared statement follows:]

U. S. HOUSE BANKING COMMITTEE

TESTIMONY BY DENNIS CAREY
JULY 31, 1984

THERE IS LITTLE AGREEMENT ON THE ECONOMIC IMPORTANCE OF THE DISLOCATED WORKER PROBLEM - DEBATE CENTERS ON WHETHER OR NOT DISPLACED WORKERS ENCOUNTER MORE DIFFICULTY IN FINDING WORK THAN OTHER U.I. RECIPIENTS, WHETHER THE NUMBER OF DISPLACED WORKERS (RANGING IN ESTIMATES FROM 100,000 TO OVER 2 MILLION) JUSTIFY NEW POLICIES AND PROGRAMS, AND WHETHER ECONOMIC RECOVERY WILL SOLVE THE PROBLEM ANYWAY. REGARDLESS OF THE OUTCOME OF THESE DEBATES, HOWEVER, WE DO KNOW THAT THE ECONOMY AND THE NATURE OF WORK ARE CHANGING. THE FORCES OF INTERNATIONAL COMPETITION, WHICH AFFECTED 8% OF DOMESTIC MARKETS IN 1960, AS OPPOSED TO 80% TODAY, AND THE INTRODUCTION OF NEW TECHNOLOGIES ARE PRODUCING NEW MARKET OPPORTUNITIES AND ELIMINATING OTHERS. THESE FORCES ARE INCREASING POLITICAL PRESSURE FOR PROTECTIONISM, DOMESTIC

CONTENT REQUIREMENTS , AND PLANT CLOSING LEGISLATION. THE SHIFTING JOB MARKET IS INTENSIFING PRESSURE ON TODAY'S WORK FORCE TO BE LITERATE, TRAINABLE, AND FLEXIBLE. THE ISSUE FOR DEBATE HERE IS WHETHER EXISTING SYSTEMS FACILITATE SUCH ADJUSTMENT OR NOT .

THE PUBLIC SHOOL SYSTEM, THE EMPLOYMENT SECURITY SYSTEM, AND THE NEW JOB TRAINING PARTNERSHIP PROGRAM ARE THE MOST SIGNIFICANT STATE SUPPORTED VEHICLES DESIGNED TO ASSIST THE WORKFORCE IN MAKING ADJUSTMENTS IN THE ECONOMY. THEIR EFFECTIVENESS IN PROVIDING MEANINGFUL ADJUSTMENT ASSISTANCE IS IN DOUBT. PUBLIC SCHOOLS , EG., HAVE BEEN INCREASINGLY UNDER ATTACK FOR NOT PREPARING STUDENTS FOR TOMORROWS SKILL REQIREMENTS, AND NOT TEACHING JOB SEARCH SKILLS . THE EMPLOYMENT SECURITY SYSTEM WAS ESTABLISHED TO DEAL WITH CYCLICAL, AND NOT STRUCTURAL CHANGE-- INCLUDING THE EMPLOYMENT SERVICE, UNEMPLOYMENT INSURANCE SYSTEM, AND 22 GRANT IN AID PROGRAMS TO FACILITATE

WORKER ADJUSTMENT. THESE PROGRAMS ARE GEARED TO HOLD WORKERS OVER DIFFICULT TIMES RATHER THAN PROVIDE MEANINGFUL READJUSTMENT THROUGH RETRAINING AND COUNSELLING. BETWEEN 1976-1980, OVER $18 BILLION WAS SPENT ON EXTENDING U.I. BEYOND THE NORMAL ENTITLEMENT PERIOD - YET ONLY $53 MILLION OF THE TOTAL -OR LESS THAN 1/2 OF 1% WAS SPENT ON TRAINING AND RELOCATION. IN LEGISLATION TO FURTHER INTEGRATE U.I. AND RETRAINING(S.1799) SENATOR SAM NUNN STATED THAT , " IN FACT, A VERY SMALL PROPORTION OF THOSE COLLECTING U.I. BENEFITS ARE ENROLLED IN TRAINING PROGRAMS.... ACCORDING TO THE U.S. DEPT. OF LABOR , OF THE 7 MILLION U.I. CLAIMANTS ACROSS THE COUNTRY REGISTERED WITH THE EMPLOYMENT SERVICE AT ANY TIME DURING FY'82, ONLY 17,680 OR 1/4 OF 1 % WERE ENROLLED IN TRAINING." AND, WHILE THE JTPA PROVIDES FOR A LIMITED NUMBER OF RETRAINING OPPORTUNITIES IT DOES NOT PROVIDE ALLOWANCES FOR TRAINEES TO LIVE ON.

DUE TO DEFICIENCIES IN THE CURRENT SYSTEM, NEW INITIATIVES HAVE SPRUNG UP OVER THE NATION DURING THE LAST 2 YEARS-

INCLUDING COLLECTIVE BARGAINING AGREEMENTS AT FORD, GM, AND ATT IN WHICH OUTPLACEMENT ASSISTANCE INCLUDING RETRAINING OPPORTUNITIES WERE PROVIDED.

AT THE STATE LEVEL, CALIFORNIA AND DELAWARE HAVE LAUNCHED EFFORTS TO DEDICATE A PORTION OF UNEMPLOYMENT INSURANCE TAX COLLECTIONS TO TRAINING ACCOUNTS. CALIFORNIA TOOK ADVANTAGE OF A SURPLUS IN THEIR UNEMPLOYMENT ACCOUNT TO DEDICATE A TAX FOR TRAINING WHILE REDUCING THEIR NET TAX BURDEN ON EMPLOYERS. MOST STATES' UNEMPLOYMENT ACCOUNTS ARE IN THE RED, HOWEVER, AND SUGGESTING ADDITIONAL EMPLOYER TAXES FOR TRAINING IS NOT POPULAR. DELAWARE, A DEBTOR STATE, HAS DISCOVERED A WINDOW OF OPPORTUNITY IN THAT WHEN WE REPAY THE FEDERAL GOVERNMENT THIS OCTOBER, A .6% F.U.T.A. TAX PENALTY WILL COME OFF. THE DUPONT ADMINISTRATION PROPOSED LEGISLATION WHICH DEDICATED A PORTION OF THE REDUCTION (.1%) TO ESTABLISH A PERMANENT TRAINING FUND. THE DELAWARE PRIVATE INDUSTRY COUNCIL, ESTABLISHED

UNDER J.T.P.A. WOULD BE RESPONSIBLE FOR THE SELECTION OF RECIPIENTS OF GRANTS TO INSURE APPROPRIATE USE OF THE FUNDS. THE TAX INCREASED THE TOTAL NUMBER OF DOLLARS AVAILABLE FOR J.T.P.A. BY 32% . THE TAX IS DESIGNED TO HELP SUPPORT THREE EMPLOYMENT AND TRAINING INITIATIVES: 1. SCHOOL- TO- WORK INITIATIVES, 2.INDUSTRIAL TRAINING, AND 3. DISLOCATED WORKERS. DUE TO FEDERAL REDUCTIONS IN FEDERAL ASSISTANCE FOR SCHOOL TO WORK PROGRAMS AND JTPA RESTRICTIONS GOVERNING SUCH PROGRAMS , ONGOING EFFORTS IN THIS AREA HAVE BEEN HARD PRESSED. PROGRAMS SUCH AS JOBS FOR DELAWARE GRADS, 70001, AND A DEL. DEPT. OF LABOR INITIATIVE TO ESTABLISH A JOB READINESS CURRICULUM IN THE PUBLIC SCHOOLS HAVE DEMONSTRATED THEIR EFFECTIVENESS ESPECIALLY WITH STUDENTS WHO LACK ACADEMIC OR VOCATIONAL DIRECTION. THESE STUDENTS ARE THOSE MOST LIKELY TO BE UNEMPLOYED , AND UDEREMPLOYED-- AND OFTEN TURN TO THE STREETS OR TO WELFARE FOR RELIEF. IF WE DON'T SOLVE THIS PROBLEM IN THE SCHOOLS, WE WILL END UP PAYING FOR IT

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LATER. THE SECOND AREA TO RECEIVE FUNDING THROUGH THE TAX IS INDUSTRIAL TRAINING-- TO PROVIDE RESOURCES TO ATTRACT FIRMS TO DELAWARE THROUGH TRAINING, AND TO PROVIDE ON THE JOB TRAINING ASSISTANCE. THE THIRD AREA TO RECIEVE FUNDING UNDER THE TAX WOULD BE FOR DISPLACED WORKERS . UNDER TITLE 3 OF JTPA, STATES ARE REQUIRED TO MATCH FEDERAL ALLOCATIONS. THE .1% TAX WOULD GENERATE SUFFICIENT RESOURCES TO MEET THIS REQUIREMENT AS WELL AS SHIFT MORE RESPONSIBILITY AND INVOLVEMENT FOR SHAPING DISPLACED WORKER PROGRAMS TO THE P.I.C..

THE ITA PRINCIPLE GOES EVEN FURTHER THAN THE DELAWARE INITIATIVE IN THAT IT WOULD REQUIRE EMPLOYEE CONTRIBUTIONS AND PROVIDE TAX INCENTIVES FOR INVESTMENT IN TRAINING. IT WOULD , AT THE URGING OF SOME , EXTEND THE SAME KIND OF TAX TREATMENT TO JOB TRAINING AS IS CURRENTLY PROVIDED FOR PRIVATE INVESTMENT IN RESEARCH AND DEVELOPMENT, PLANT AND EQUIPMENT. A VOUCHER BASED SYSTEM MODELLED ON THE G.I. BILL, THE ITA

WOULD HAVE SEVERAL KEY ELEMENTS NECESSARY TO ENSURE EFFICIENCY AND ACCOUNTABILITY.--

1. THE WORKER IS INVOLVED IN THE ADJUSTMENT DECISION AND HAS A FINANCIAL STAKE IN THE PROCESS.

2. THE SYSTEM IS COMPREHENSIVE IN THAT IT PROVIDES COVERAGE FOR ANYONE WHO IS DISPLACED.

3. THE SYSTEM IS TIED TO THE RECEIPT OF U.I. BENEFITS THEREBY ENSURING INCOME SUPPORT DURING THE ADJUSTMENT PERIOD.

4. THE SYSTEM PROVIDES FOR EARLY INTERVENTION AND FLEXIBILITY.

5. THE SYSTEM PROVIDES FOR ASSURED FINANCING.

THERE ARE SEVERAL VARIATIONS ON THE ITA THEME NOW BEFORE THE CONGRESS. ALL RECOGNIZE THE CRITICAL LINK BETWEEN PRODUCTIVITY AND TRAINING AND CURRENT SYSTEM FAILURE TO ENCOURAGE INVESTMENT IN TRAINING AND OTHER MEANINGFUL READJUSTMENT ASSISTANCE. THESE INCLUDE JOB SEARCH ASSISTANCE, JOB DEVELOPMENT, COUNSELLING, RELOCATION ASSISTANCE AND LABOR MARKET INFORMATION AS WELL AS TRAINING.

IF THE U.S IS TO KEEP PACE WITH THE VELOCITY OF ECONOMIC CHANGE --EVEN SET IT- THEN IT MUST BE PRPARED TO HELP ITS WORKERS ADAPT TO CHANGING ECONOMIC THREATS AND OPPORTUNITIES. HOW WELL AND AT WHAT PACE THIS IS DONE WILL IN LARGE MEASURE DETERMINE HOW WELL AND AT WHAT PACE THE U.S. WILL BE ABLE TO STRENGTHEN ITS OVERALL ECONOMIC COMPETITIVENESS.

Ms. OAKAR. Thank you very much.

You know, one of the reasons you were invited is that we are very aware, the Northeast-Midwest Coalition and the chair, that the State of Delaware has one of the best programs in the country. It is a credit to you and all who work with that program.

You do have—I think you have touched on this—a voucher-based training program using a form of the principle of ITA. Do you think it is effective, and has your experience been a good one?

Mr. CAREY. Yes. I think when we entered into this program 2 years ago we all were operating under the assumption that all dislocated workers needed to be retrained for new skills. That has not borne out to be the case at all. In fact, approximately 75 percent of our dislocated workers did not need to be retrained to secure new employment opportunities. Rather, they needed counseling, job search assistance, and job development assistance—underscoring the need to expand the definition of training to incorporate those very critical elements in the readjustment process.

The second interesting piece of our voucher-based program in Delaware was that we set up a sophisticated evaluation system to monitor a control group, as well as our participating population. We found that after the program was over the control group, those people who did not receive services, did almost as well as those people who received training and readjustment assistance.

That obviously was a major disappointment to me after having bragged about this program to several State legislators for a long time. But I think it is something that should be considered as we approach the concept of individual training accounts and whether we, in fact, are running the risk of, in fact, encouraging career change at great expense when career change may not be necessary to secure a new employment opportunity in the work force.

Ms. OAKAR. Well, thank you very much for your fine testimony. We wish you well in the future—and your comments on ITA, in particular.

This concludes the subcommittee hearing.

[Whereupon, at 12:40 p.m., the subcommittee was adjourned, to reconvene subject to the call of the Chair.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR INCLUSION IN THE RECORD

TACIT VERTICAL COLLUSION AND THE LABOR-INDUSTRIAL COMPLEX

WALTER ADAMS
JAMES W. BROCK

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By Walter Adams* and James W. Brock**

Tacit Vertical Collusion and the Labor-Industrial Complex

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I. INTRODUCTION

In his classic book, *American Capitalism*,[1] John Kenneth Galbraith argued that concentrations of economic power are not the social evil that antitrust advocates had traditionally believed them to be. Countervailing power, not classical competition, he said, was the instrument for keeping concentrated power in check.[2]

The actual or real restraints on a firm's market power are, according to Galbraith, vested not in its competitors but in its customers and suppliers; they are imposed not from the same side, but from the opposite side of the market. Thus, "private economic power is held in check by the countervailing power of those who are subject to it. The first begets the second."[3] A monopoly on one side of the market offers an inducement to both suppliers and customers to develop the power with which they can defend themselves against exploitation. Thesis gives rise to antithesis, and there emerges a system of checks and balances which makes the economy as a whole workable, a modus operandi which lends stability to American capitalism. Most importantly, this system of checks and balances relieves the government of its obligation—imposed by the now antiquated antitrust laws—to launch any frontal attack on concentrated economic power. No longer need the government be concerned about the decline of competition or the sparsity of sellers in a particular market. Countervailing power can be relied on to eliminate the danger of any long run exploitation by a private economic power bloc.

Put differently, countervailing power operates primarily through the creation of bilateral monopoly and/or oligopoly situations. A monopoly on one side of the market finds its power neutralized by the appearance of a monopoly on the other side of the market. Thus, a system of checks and balances is built on the foundation of bilateral power concentrations.

Galbraith cites the labor market as an area where the operation of countervailing power can be observed with the greatest clarity, for it is in the labor market that giant unions bargain on a national, industry-wide scale against groups of employers acting jointly either through a trade association or an informal ad hoc bargaining committee.[4] Galbraith sees countervailing power at work in highly

1. J.K. GALBRAITH, AMERICAN CAPITALISM: THE CONCEPT OF COUNTERVAILING POWER (1952).
2. For early critiques of Galbraith's theory, see generally Adams, *Competition, Monopoly, and Countervailing Power*, 67 Q.J. ECONS. 469 (1953); Schwartz, *Book Review*, 81 HARV. L. REV. 915 (1968); Stigler, *The Economist Plays With Blocs*, 44 A. ECON. REV. 7 (1954).
3. J. GALBRAITH, *supra* note 1, at 118.
4. *Id.* at 110.

concentrated industries like the steel, rubber, and automobile manufacturing industries, and points out that "[n]ot only has the strength of the corporations in these industries made it necessary for workers to develop the protection of countervailing power, it has provided unions with the opportunity for getting something more as well. If successful they could share in the fruits of the corporation's market power."[5] Thus, Galbraith justifies bilateral monopoly in the labor market because it prevents unilateral exploitation, while simultaneously allowing one monopolist to share in whatever exorbitant gains may accrue to the other.

But bilateral monopoly in the labor market has further consequences. According to pure economic theory, this type of market structure is characterized by what Heinrich von Stackelberg aptly called *Gleichgewichtslosigkeit*—an incapacity to achieve a stable equilibrium.[6] The inherent and irreconcilable conflict between the bilateral monopolists can be rationally resolved (in the best interest of both parties) only if they agree to enter into a vertical combination or conspiracy. Such coalescence, of course, represents a compromise—a case of mutual forbearance—in order to achieve joint profit maximization. And, says Stackelberg, profits will be maximized for the bilateral monopolists if, for example, in labor-management confrontations, the employer (a monopsonist in the labor market) enjoys a monopoly in the sale of his products.[7] In other words, market control or market dominance in the product market serves not only the best interests of management but also the best interests of labor. Hence, a bilateral monopoly situation naturally militates toward coalescence of power between management and labor, not antagonism or countervailance of power.

Understandably, this insight (which is neither profound nor esoteric) was used by the exponents of industrial cartels as a prime argument to persuade workers that cartels were in labor's best interests. Robert Liefmann, for example, pointed out that cartels were in a better position than competitive firms to grant wage increases, because they could pass the resulting cost increases on to consumers in the form of higher prices:

5. *Id.* at 122. In fairness to Galbraith, it must be noted that he recognizes inflationary periods as special situations in which countervailing power tends to be ineffective.

6. H. STACKELBERG, MARKTFORM UND GLEICHGEWICHT (1934).

7. *Id.* at 100: ("Eine Erhöhung des gemeinsames Gewinnes kommt hier nur dann zustande, wenn der Nachfrager des bilateralen Monopols zugleich über ein einfaches Angebotsmonopol auf dem Markte seiner Produkte verfügt." Translated, this passage states: an increase in the joint profit becomes possible only if the buyer in the bilateral monopoly situation also enjoys a monopoly over the product which he sells.).

> Where the firms are in a cartel, they are more inclined to concede the workers higher wages than in a state of free competition, because they find it easier to pass the increased costs on to their customers by charging higher prices. The workers will therefore, generally speaking, find it easier to impose higher wages upon organized firms, and it is in their power, at least if they can form strong trade unions, to demand wages increasing with the cartel's prices, i.e., a "*sliding wage-scale*."[8]

Thus, said Liefmann, market dominance and market control (i.e., cartels and monopolies) were in the best interests of labor as well as management, because the greater the market control the more ample the fruits to be shared through a system of vertical cooperation.

The consequence of such cooperation from the viewpoint of the public interest is, of course, another matter. In a prescient article written in 1890, Alfred Marshall observed that traditionally the public was protected by labor-management antagonism.[9] Employers and employed "have seldom worked together systematically to sacrifice the interests of the public to their own, by lessening the supply of their services or goods, and thus raising their price artificially. But," Marshall added:

> there are signs of a desire to arrange firm compacts between combinations of employers on the one side and of employees on the other to restrict production. Such compacts may become a grievous danger to the public in those trades in which there is little effective competition from foreign producers; a danger so great that if these compacts cannot be bent by public opinion they may have to be broken up by public force.[10]

In short, the absence of effective competition in product markets, when combined with vertical collusion between management and labor—whether tacit or overt—poses a central problem for public policy. Countervailing power is not a worthy substitute for antitrust policy, because countervailing power tends to be subverted by coalescing power and thus makes the problem of controlling market power more intractable than ever.

In this Article, we propose to test Galbraith's countervailing power thesis by examining labor-management conduct in four different market situations. Two of our case studies will deal with "regulated" industries and two with industries in the "private" sector. We shall demonstrate that in all four cases, coalescing power rather than countervailing power is systematically created and maintained; that this conduct constitutes a form of tacit vertical collusion; that a central objective of this collusion is the suppression of competition in relevant product markets in order to immunize cost-price escalation by labor and management from an autonomous, exogenous control mechanism; and that the result of

8. R. LIEFMANN, CARTELS, CONCERNS, AND TRUSTS 80 (1927).
9. MEMORIALS OF ALFRED MARSHALL (A.C. Pigou ed. 1956).
10. *Id.* at 288-89.

the exercise of this coalescing power has been to fuel a pervasive cost-price-cost spiral which has adversely affected macrostabilization policies in the United States—and, indeed, in the leading industrial nations of the western world.

II. THE REGULATED SECTOR

Governmental regulation of industry, as originally conceived, was to be both a supplement to and substitute for competition. It was to be applied in those industries where the cost of entry was so great or the duplication of facilities so wasteful that some degree of monopoly was considered unavoidable. Here, the visible hand of public regulation was to replace the invisible hand envisioned by Adam Smith in order to protect consumers against extortionate charges, restriction of output, deterioration of service, and unfair discrimination. This was the rationale of the Interstate Commerce Act of 1887.[11]

This regulatory concept, however, was first eroded and then extended. The regulatees themselves came to recognize that the better part of wisdom was not to abolish regulation but to utilize it. Gradually, the public utility concept was transformed from consumer oriented, to industry oriented regulation. By a process so brilliantly analyzed by Horace Gray,

> the policy of state-created, state-protected monopoly became firmly established over a significant portion of the economy and became the keystone of modern public utility regulation. Henceforth, the public utility status was to be the haven of refuge for all aspiring monopolists who found it too difficult, too costly, or too precarious to secure and maintain monopoly by private action alone. Their future prosperity would be assured if only they could induce government to grant them monopoly power and to protect them against interlopers, provided always, of course, that government did not exact too high a price for its favors in the form of restrictive regulation.[12]

Business interests gradually began to appreciate the virtues of public utility status and to embrace government regulation as an instrument of protection from competition. As early as 1892, five years after Congress had passed the Interstate Commerce Act, Richard Olney, a former director of several railroad companies and U.S. Attorney General, stated the proregulation position with Machiavellian clarity. In a letter to his old friend Charles E. Perkins, president of the Chicago, Burlington & Quincy Railroad, who had implored Olney to spearhead a drive to repeal the Interstate Commerce Act, Olney wrote as follows:

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11. Ch. 104, 24 Stat. 379 (1887) (discussed in W. ADAMS & H.M. GRAY, MONOPOLY IN AMERICA 43-47 (1955)).
12. Gray, *The Passing of the Public Utility Concept*, 16 J. LAND & PUB. UTIL. ECON. 8 (1940).

> My impression would be that looking at the matter from a railroad point of view exclusively it would not be a wise thing to undertake . . . . The attempt would not be likely to succeed; if it did not succeed, and were made on the ground of inefficiency and uselessness of the Commission, the result would very probably be giving it the power it now lacks. The Commission, as its functions have now been limited by the courts, is, or can be made, of great use to the railroads. It satisfies the popular clamor for a government supervision of the railroads, at the same time that that supervision is almost entirely nominal. Further, the older such a commission gets to be, the more inclined it will be found to take the business and railroad view of things. It thus becomes a sort of barrier between the railroad corporations and the people and a sort of protection against hasty and crude legislation hostile to railroad interests . . . . The part of wisdom is not to destroy the Commission, but to utilize it.[13]

By 1940, protectionism by regulation had become both a popular and respectable governmental control mechanism. Independent regulatory commissions had been entrusted with the oversight of motor carriers, inland waterways, airlines, communications, and natural gas — despite the fact that some of these industries hardly conformed to the structural prototype of "natural" monopolies.

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13. Letter from Richard Olney to Charles E. Perkins (Feb. 16, 1893) *quoted in* M. JOSEPHSON, THE POLITICOS 526 (1938). Perceptive business leaders in the private sector also recognized that regulation was an admirable protectionist device which would guarantee an escape from competition. Thus, in 1911, when the U.S. Steel Corporation came under antitrust attack, its president, Elbert Gary, proposed governmental regulation of the industry as an alternative to the cruelty of control by competition. In testimony before a congressional committee, Judge Gary stated the case for regulation with undisguised candor:

> I realize as fully, I think, as this committee that it is very important to consider how the people shall be protected against imposition or oppression as the possible result of great aggregations of capital, whether in the possession of corporations or individuals. I believe that is a very important question, and personally I believe that the Sherman Act does not meet and will never fully prevent that. I believe we must come to enforced publicity and governmental control, . . . even as to prices, and, so far as I am concerned, speaking for our company, so far as I have the right, I would be very glad if we had some place where we could go, to a responsible governmental authority, and say to them, "Here are our facts and figures, here is our property, here our cost of production; now you tell us what we have the right to do and what prices we have right to charge." I know this is a very extreme view, and I know that the railroads objected to it for a long time; but whether the standpoint of making the most money is concerned or not, whether it is the wise thing, I believe it is the necessary thing, and it seems to me corporations have no right to disregard these public questions and these public interests.

U.S. STEEL CORPORATION: HEARINGS BEFORE THE HOUSE COMM. ON THE INVESTIGATION OF THE U.S. STEEL CORPORATION, vol. 3, at 79 (1911).

"Your position [then]," said Congressman Littleton of the committee, "[is] that cooperation is bound to take the place of competition and that cooperation requires strict governmental supervision?" *Id.*

"That is a very good statement," replied the judge. *Id.*

"Public convenience and necessity," not the dictates of the competitive market, had become the standard for determining entry, rates, and quality of service. Most important, this great transformation had been accomplished—not over the objection of business interests, but with their approval and (sometimes enthusiastic) support.[14]

Eventually, experience with regulation revealed what public interest advocates had long ago predicted. An accumulation of empirical evidence indicated that regulation in some industries was not a device to protect consumers from exploitation but to protect vested interests from competition. At the hands of some regulatory commissions, the power to license had become the power to exclude; control over rates had turned into an instrument of price supports; and authority over mergers had become a mechanism for fostering industry concentration.[15] The regulatory commissions, according to former chairman of the Federal Trade Commission (FTC), Lewis Engman (a republican appointee serving during the Nixon Administration), had transmuted the industries under their jurisdiction into "federal protectorates, living in the cozy world of cost-plus, safely protected from the ugly spectres of competition, efficiency, and innovation."[16] In short, under the aegis of the "independent" commissions, regulation was essentially a neo-mercantilist device of protectionism in which industry, labor, and government regulators had an abiding interest—to the detriment of the general public.

When these criticisms reached crescendo proportions, the drive for deregulation— particularly, in airlines and trucking—gathered force and became a palatable political issue both in the White House and the Congress.[17] Commissioners committed to administrative deregulation were appointed to the agencies, and deregulation bills found increasing support in Congress.[18] And this set the

14. *See, e.g.*, G. KOLKO, RAILROADS AND REGULATION: 1877-1916 (1965); G. KOLKO, THE TRIUMPH OF CONSERVATISM (1963).

15. Adams, *The Role of Competition in the Regulated Industries*, 48 A. ECON. REV. 527 (1958). *See also* Schwartz, *Legal Restriction of Competition in the Regulated Industries* 67 HARV. L. REV. 436 (1954).

16. Address by L. Engman to the Financial Analysts Federation, in Detroit, Michigan (Oct. 7, 1974).

17. *See, e.g., Federal Restraints on Competition in the Trucking Industry: Antitrust Immunity and Economic Regulations, Report of the Senate Comm. on the Judiciary*, 96th Cong., 2d Sess. (1980) [hereinafter cited as *Kennedy Report* (1980)]; *Civil Aeronautics Board Practices and Procedures: Report of Subcomm. on Administrative Practices and Procedure of the Senate Comm. on the Judiciary*, 94th Cong., 1st Sess. (1975) [hereinafter cited as *Kennedy Report* (1975)].

18. *See, e.g., Aviation Regulatory Reform: Hearings on H.R. 11,145 Before the Subcomm. on Aviation of the House Comm. on Public Works and Transport*, 95th

stage for the virulent opposition by business regulatees and organized labor to deregulation, demonstrating the operation of coalescing power and tacit vertical collusion chronicled in this section.

A. Airlines

The Civil Aeronautics Act of 1938[19] was passed with the dual objective of promoting the growth of aviation while maintaining sufficiently low fares to allow the public access to air travel. The newly created Civil Aeronautics Board (CAB) was entrusted with the regulation of the airline industry and equipped with three basic powers: (1) the entry power: the power to grant or to deny "certificates of public convenience and necessity," which an airline would be required to obtain in order to fly interstate; (2) the rate power: the authority to suspend or to set air fares; and (3) the antitrust power: the power to approve (or disapprove) agreements among airlines, with approval conferring immunity from the antitrust laws.[20] In addition, the Board was given certain subsidiary powers, including the power to authorize mergers, the power to administer a subsidy, the power to regulate certain peripheral matters of airline service (e.g., baggage liability, tariff quotations, discrimination), and the power to enforce its own regulations.[21]

In practice, however, regulation did not prove to be a felicitous experiment in economic statecraft and fell short of achieving the ostensible objectives of the 1938 legislation. Thus, the Senate Subcommittee on Administrative Practices and Procedures found that, under the CAB's control, "entry into the industry has been effectively blocked."[22] According to the Committee:

> The present 10 domestic trunk carriers directly descend from the 16 in business in 1938; the nine existing local service carriers descend from 19 airlines allowed to provide local service directly after World War II. No new domestic trunkline has ever been authorized, and only one new local-service carrier has been authorized since 1950.[23]

Although the industry "is potentially highly competitive," the Committee further found that:

> [R]egulation discourages the airlines from competing in price and virtually forecloses new firms from entering the industry. The result is high fares and security for existing firms. But the result does not mean high profits. Instead the airlines—prevented from competing in price—simply channel their competitive energies toward costlier service: more flights, more planes, more frills. Thus, the skies are filled with gourmet meals and

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Cong., 2d Sess. 122-86 (1978) (testimony of Alfred E. Kahn, Chairman, Civil Aeronautics Board).

19. Ch. 601, 52 Stat. 973 (1938).
20. *Kennedy Report* (1975), *supra* note 17, at 2.
21. *Id.*
22. *Id.* at 6.
23. *Id.*

> Polynesian pubs; scheduled air service is frequent. Yet planes fly across the continent more than half empty. And fares are "sky high."[24]

The Committee concluded that "Board regulation has not effectively brought about the low-fare service that is technically feasible and that consumers desire," that "[a]ir service can be made available to the American public at significantly lower prices," and that "[i]ncreased competition is likely to bring about the provision of such service."[25]

When a series of bills were introduced in the late 1970's to promote the public interest by deregulating the industry, airline management and organized labor launched a joint offensive to preserve the regulatory status quo and its immunity from effective competition. Their remarkably parallel, multipronged attack on deregulation was a dramatic illustration of coalescing power in action.

1. Deterioration of Service for Smaller Communities

A major argument made by airline management and labor against deregulation was that increased competition would cause severe deterioration of air service to small- and medium-sized communities across the country. They argued that with free entry and exit, airlines would concentrate on the most densely travelled (i.e., the most lucrative) routes between major metropolitan areas. Competition in these corridors, in turn, would eliminate the excess profits required to subsidize service to other smaller communities. Thus, they argued, hundreds of communities would suffer from a reduction in (or complete elimination of) air service along with an increase in fares, thereby creating bleak prospects for further economic growth and development, given the importance of air service in modern society.

As uncontrolled, profit-maximizing carriers focused upon the most lucrative, highest-density markets, Continental Airlines argued, their "marginal markets, namely shorter-haul and lower-density markets . . . are bound to suffer."[26] "In this trial by fire," a United spokesman added, "the small cities and marginal segments will be burned."[27] Nor would the victims of the portended mael-

24. *Id.* at 3.
25. *Id.* at 19.
26. *Aviation Regulatory Reform: Hearings on H.R. 8813 Before the Subcomm. on Aviation of the House Comm. on Public Works and Transportation*, 95th Cong., 1st Sess., pt. 2, 1835 (1977) (statement of Continental Airlines presented by Lee M. Hydeman, Counsel) [hereinafter cited as *Anderson Hearings* (1977)].
27. *Regulatory Reform in Air Transportation: Hearings on S. 2551, S. 3364, and S. 3536 Before the Subcomm. on Aviation of the Senate Comm. on Commerce*, 94th Cong., 2d Sess. 538 (1976) (statement of Edward E. Carlson, Chairman and Chief Executive Officer, United Airlines) [hereinafter cited as *Cannon*

strom be limited to the smallest communities: "Any legislation that allows the more lucrative branches from the airline tree to be snipped off," Mr. Borman argued on behalf of Eastern Airlines, "is going to result in a severe impact on Nashville and Raleigh/Durham and in medium-sized cities in this country."[28] Speaking for all major airline carriers, the Air Transport Association (ATA) concluded that only a handful of major cities would continue to be served adequately. "Accordingly, the real choice to be made," the ATA warned, "is between either a continuation of the extensive air network we have today, with constantly improving service to all segments of the public, or a concentration of operations in the high density air markets, with an accompanying reduction of services to the smaller, less productive markets."[29]

Organized labor was in complete agreement with the position taken by airline management. The Airline Pilots Association argued:

> It doesn't take much imagination to visualize what profit-oriented airline managements would do in a liberalized entry environment. The opportunity to get into the more lucrative, high-population markets would be too much for most airline marketing executives to resist. . . . The unfortunate consequence of this development would be . . . a reduction or loss of service now enjoyed by the smaller cities of America whose traffic-generating potential is limited . . . .[30]

Hearings (1976)]. United subsequently reversed its position on this and other points of opposition to deregulation by carriers. On the alleged small city problems, for example, United later testified as follows:

> Some have said that carriers will tend to reduce service to some cities and shift airplanes to more lucrative markets. This argument is also disproven by the facts. The levels of service provided under current regulation to most communities is substantially above what regulation requires. Most service is provided because it is profitable. I can tell you that United Airlines will not reduce existing profitable operations to gamble on proposed operations that might be profitable.
>
> . . . .
>
> We believe that fears of abandonment are generally exaggerated. Certainly, by way of comparision, existing law has not insulated small cities. According to our data, 143 small cities have lost scheduled service since 1967.

Anderson Hearings (1977) *supra* note 26, 1364-66 (statement of Richard J. Ferris, President, United Airlines).

28. *Reform of the Economic Regulation of Air Carriers: Hearings Before the Subcomm. on Aviation of the House Comm. on Public Works and Transportation*, 94th Cong., 2d Sess. 486 (1976) (testimony of Frank Borman, President and Chief Executive Officer, Eastern Airlines) [hereinafter cited as *Anderson Hearings* (1976)].
29. *Cannon Hearings* (1976) *supra* note 27, at 1009 (statement of Paul R. Ignatius, President, Air Transport Association).
30. Remarks by J. O'Donnell, President, Air Line Pilots Association, before the National Democratic Platform Committee 8 (1976) [hereinafter cited as *Democratic Platform Address*].

The Airline Clerks concurred: "It is obvious that airlines will have to concentrate on the major population centers in order to survive. If they direct their resources to these population centers, smaller communities which are not profitable will eventually be dropped or at the least, service to those cities will be greatly curtailed."[31] Similarly, the Executive Council of the AFL-CIO concluded that deregulation would "threaten air service to many smaller cities."[32]

Ultimately, as the Air Transport Association argued, the deregulation of air service would discourage economic development of small- and medium-sized communities while limiting the access of residents in these areas to the world.[33] The Airline Pilots concurred: "A city in today's world without adequate air service is in the same dire shape as one without rail service 50 years ago. It is isolated and dying."[34]

2. Competition Would Be Wasteful and Inefficient

A second line of attack on deregulation was that it would encourage wasteful excess capacity and fuel consumption as more carriers competed for the same traffic. Paradoxically, management and labor argued, deregulation would result in higher— not lower—fares. In making this argument, each group impugned the relevance of *intra*state airfares, which are considered to be beyond the reach of CAB authority and which are thirty-five to fifty percent lower than regulated fares on comparable interstate flights, as an index of "reasonableness."

"In our view," said a spokesman for Continental Airlines,

> merely letting existing carriers roam freely in the market place is likely to lead to wasteful competition, since we believe that new entry will be in medium-haul, high-density markets already well served and that new entry in those markets will simply result in unneeded capacity at times of day duplicating existing service . . . . [S]uch excess capacity is bound to

31. *Regulatory Reform in Air Transportation: Hearings on S. 292 and S. 689 Before the Subcomm. on Aviation of the Senate Comm. on Commerce, Science, and Transportation*, 95th Cong., 1st Sess., pt. 3, 1324 (1977) (statement of Allen W. McCauley, Director, Air Transport Division, Brotherhood of Airline Clerks) [hereinafter cited as *Cannon Hearings* (1977)].

32. *Id.* at 1322 (statement of AFL-CIO Executive Council).

33. *Cannon Hearings* (1976), *supra* note 27, at 1014 (statement of Paul R. Ignatius, President, Air Transport Association). *See also Oversight of Civil Aeronautics Board Practices and Procedures: Hearings Before the Subcomm. on Administrative Practice and Procedure of the Senate Comm. on the Judiciary*, 94th Cong., 1st Sess. 585 (1975) (prepared statement of Harvey J. Wexler, Senior Vice President, Continental Airlines) [hereinafter cited as *Kennedy Hearings* (1975)].

34. *Democratic Platform Address*, *supra* note 30, at 8. *See also Cannon Hearings* (1976), *supra* note 27, at 1271 (statement of Francis A. O'Connell, Legislative Director, Transport Workers Union).

be counterproductive. It will lead to pressure for higher, not lower, prices.[35]

Or, as a TWA representative put it, "[t]he more competition that exists, the more capacity is brought into the market to slice the pie into smaller pieces."[36] Equally wasteful, according to Braniff, would be the impact upon fuel consumption: "If you are for free entry to add more airlines, you have to disregard fuel conservation. Fuel consumption will soar as more airlines burn up the skies fighting for shares of the existing travel market."[37]

Likewise, labor spokesmen testified that "it is almost certain that load factors will not be increased to any significant extent;"[38] therefore, "wasteful excess capacity in major air travel markets" would be a likely consequence of free entry.[39] Also, the Airline Clerks asked, "how can we in good conscience propose legislation of this type which would promote additional consumption of precious energy[?]"[40]

Both groups attacked the relevance of significantly lower fares charged by intrastate carriers free of CAB regulation as indicative of the likely effects of nationwide deregulation. The Air Transport Association claimed the intrastate and interstate systems to be "fundamentally different" and, therefore, incomparable on a number of grounds: intrastate carriers frequently operate under monopoly conditions; intrastate carriers concentrate on high density routes; California and Texas are uniquely blessed with favorable weather conditions; short hauls permit fewer cabin amenities and thus more seating; costly overnight crew arrangements are avoided; ticketing, reservation and baggage handling are simplified; and maximum utilization of equipment is possible.[41] Similarly, a union spokesman argued that intrastate conditions

35. *Anderson Hearings* (1977), *supra* note 26, at 1835 (statement of Continental Airlines presented by Lee M. Hydeman, Counsel).
36. *Cannon Hearings* (1976), *supra* note 27 at 658 (statement of Charles C. Tillinghast, Jr., Chairman and Chief Executive Officer, Trans World Airlines). "If you want to get low fares," Mr. Maytag, the president of National Airlines, remarked, "the ideal way to do it is have one airline and you can schedule perfectly for the whole United States. You can schedule for peak periods. You can fill your airplanes up. Schedule them for the proper times. Please don't understand that I am suggesting this kind of thing," he hastened to add. *Cannon Hearings* (1977), *supra* note 31, at 1224.
37. *Cannon Hearings* (1977), *supra* note 31, at 1216 (statement of Harding L. Lawrence, Chairman and President, Braniff Airways).
38. *Cannon Hearings* (1976), *supra* note 27, at 839 (statement of John J. O'Donnell, President, Air Line Pilots Association).
39. *Anderson Hearings* (1977), *supra* note 26, at 1584 (statement of John J. O'Donnell, President, Air Line Pilots Association International).
40. *Cannon Hearings* (1977), *supra* note 31, pt. 3, at 1325 (statement of Allen W. McCauley, Director, Air Transport Division, Brotherhood of Airline Clerks).
41. *Cannon Hearings* (1976), *supra* note 27, at 1011-12 (statement of Paul R. Ignatius, Air Transport Association).

"are not and cannot be duplicated" in interstate markets owing to unique circumstances.[42]

3. Industry Chaos

A third argument against deregulation was that it would usher in a state of abject chaos. Absent the stability of route and rate regulations, labor and management argued, the frequency, price, and availability of service would fluctuate violently and unpredictably.

Would the country be prepared, the president of TWA asked rhetorically, "for the rise and fall of airline prices, depending on variances in supply/demand relationships at different times in various markets?"[43] "The public," according to Continental Airlines, "would be left with great uncertainty as to the availability of air service by any particular carrier or in any given market."[44] In short, Continental concluded, "[t]he situation for the travelling public and shippers is likely to be chaotic."[45]

Spokesmen for organized labor agreed with the assessment made by Continental. The Transport Workers Union, for example, warned of the widespread confusion that would follow in the advent of governmental deregulation: "Fares will fluctuate wildly, schedules can and will be altered on whim or with changing demand, thereby stranding business passengers and shippers' goods. Airline flight crews will not know one day to the next when they will fly, to where and for whom."[46] The Machinists were content in their testimony to rely upon remarks by management that deregu-

42. *Id.* at 838 (statement of John J. O'Donnell, President, Air Line Pilots Association International); *Anderson Hearings* (1977), *supra* note 26, at 1572 (statement of William G. Mahoney, Counsel for Brotherhood of Railway and Airline Clerks, International Association of Machinists, and Transport Workers Union); *id.*, pt. 1, at 334 (testimony of William Scheri, Assistant General Chairman, International Association of Machinists and Aerospace Workers).

In reaching these conclusions, labor groups unabashedly relied, *inter alia*, on discussions with and the testimony of airline management. Thus, Mr. Scheri, speaking for the Machinists, rested his conclusions in this regard on talks with his colleagues "plus many management people across this country." *Id.* The airlines pilots' representative, Mr. O'Donnell, cited analyses of intrastate carriers conducted and presented by Continental and Texas International. *Cannon Hearings* (1976), *supra* note 27, at 840.

43. *Cannon Hearings* (1976), *supra* note 27, at 661 (statement of Charles C. Tillinghast, Jr., Chairman and Chief Executive Officer, Trans World Airlines).

44. *Id.* at 442 (statement of Robert F. Six, Chairman and Chief Executive Officer, Continental Airlines).

45. *Kennedy Hearings* (1975), *supra* note 33, at 585 (statement of Harvey J. Wexler). *See also Cannon Hearings* (1976), *supra* note 27, at 1015 (statement of Paul R. Ignatius, President, Air Transport Association).

46. *Cannon Hearings* (1976), *supra* note 27, at 1271 (statement of Francis A. O'Connell, Legislative Director, Transport Workers Union).

lation would be tantamount to "anarchy" and would cause "chaos instead of an orderly system of air service,"[47] while the Airline Pilots Association warned that regulatory control "is the glue which holds the network of interconnecting air transport services together so it can function in the public interest."[48]

4. Predation, Concentration, and Control

A fourth argument against deregulation was that it would permit the largest airlines to predatorily price other carriers out of the industry. This, it was claimed, would lead to increased concentration and control in the hands of a few, powerful firms which would then be able to raise rates. The paradox, management and labor once again argued, was that deregulation would result in less competition, higher fares, and would eventually lead to demands for re-regulation—or worse, nationalization—of the industry.

"In my view," the president of one carrier testified, "freedom of entry, exit and pricing would enable the major carriers to dominate all of the larger lucrative air transportation markets. Their substantially greater capital resources alone would bring this about in the absence of the route protection afforded by the existing certificate of public convenience and necessity."[49] "If you eliminate differences between airlines in routes and prices as well as equipment," according to another airline president, "then marketing success becomes a simple question of size. The small airlines will not have the market identity, route strength and financial power. I repeat marketing success will simply become a function of size."[50] Not only is aviation "a highly predatory business," a spokesman for Western Airlines testified, it is surrounded by "a group of predatory opportunists."[51] Another carrier saw concentration evolving from mergers between carriers:

> The efficient medium-sized trunk and regional carriers will be stripped of all security in the markets they have developed and serve. They will be forced to merge with the larger carriers on terms dictated by the giants. As a result, within a few years, the United States will have fewer

47. *Anderson Hearings* (1977), *supra* note 26, pt. 1, at 1017 (testimony of Louis Schroeder, Assistant General Chairman, District Lodge 141, International Association of Machinists).
48. *Id.* at 1584 (statement of John J. O'Donnell, President, Air Line Pilots Association International).
49. *Cannon Hearings* (1976), *supra* note 27, at 792 (statement of Edwin I. Colodny, President and Chief Executive Officer, Allegheny Airlines).
50. *Anderson Hearings* (1977), *supra* note 26, at 1636 (statement of Harding L. Lawrence, Chairman of the Board and Chief Executive Officer, Braniff Airways).
51. *Cannon Hearings* (1977), *supra* note 31, pt. 2, at 533-34 (testimony of Arthur F. Kelly, Chairman of the Board and Chief Executive Officer, Western Airlines).

> trunklines than today. Those carriers will be so large and powerful that they will each dominate certain U.S. markets.
>
> Rather than creating a more competitive and healthy environment, this legislation will produce a climate designed to favor big airlines. The disappearance of smaller carriers—considered to be the industry's most efficient—will only lead to increasing concentration.[52]

Inexorably, then, carriers argued that deregulation would eventually lead to a "weak 'controlled' competition that usually goes with oligopoly resulting in less emphasis on service and low fares,"[53] an increased "[a]bility of a few airlines to dictate the timing and direction of new aircraft technology resulting in a tendency to limit technological innovation,"[54] "higher fares and less service,"[55] and, again paradoxically, the need "for more regulation, rather than less."[56]

Representatives of organized labor foresaw the same serious oligopolistic consequences. The AFL-CIO, for example, warned that deregulation would "encourage cut-throat pricing practices."[57] And, like their managerial counterparts, union spokesmen argued that any reduction in fares following deregulation would be a temporary phenomenon and a prelude to increased concentration.[58] One labor representative cited the remarks of the former president of United Airlines that "[a]fter the dust settled, the big carriers would be bigger and the little carriers absent."[59] The Machinists

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52. *Id.* pt. 3, at 1220 (statement of L.B. Maytag, Chairman of the Board and Chief Executive Officer, National Airlines).
53. *Id.* pt. 2, at 1013 (statement of Francisco A. Lorenzo, Chairman, Association of Local Transport Airlines, and President, Texas International Airlines).
54. *Id.*
55. *Cannon Hearings* (1976), *supra* note 27, at 437 (statement of Robert F. Six, Chairman and Chief Executive Officer, Continental Airlines).
56. *Cannon Hearings* (1977), *supra* note 31, pt. 1, at 472 (statement of C.E. Meyer, Jr., President and Chief Executive Officer, Trans World Airlines). *See also Cannon Hearings* (1976) *supra* note 27, at 661 (statement of Charles C. Tillinghast, Jr., Chairman and Chief Executive Officer, Trans World Airlines).
57. *Cannon Hearings* (1977), *supra* note 31, at 1322 (statement by AFL-CIO Executive Council).
58. *Democratic Platform Address*, *supra* note 30, at 9.
59. *Anderson Hearings* (1977), *supra* note 26, pt. 1, at 1017 (statement of Louis Schroeder, Assistant General Chairman, District Lodge 141, International Association of Machinists). Labor's reliance on United's initial position proved premature when the carrier subsequently recanted:

> Could [deregulation] lead to concentration or domination by United or any other carrier? There is little evidence of economy of scale in U.S. air transportation. Smaller trunks — and widely recognized intrastate commuters — have efficiencies and marketing skills. Nimble and smart smaller carriers could really do well in this new environment.

Id. pt. 2, at 1364 (statement of Richard J. Ferris, President, United Airlines). United's "about-face" drew the following response from the vice president of TWA, W.D. Slattery:

predicted that the eventual result of deregulation would be "anywhere in the neighborhood of two to three, at the most four, carriers left in the United States," "a monopolistic airline system unable and unwilling to meet the public need or convenience," and "the Federal Government being compelled to nationalize the industry".[60]

5. Inability to Obtain Capital

A fifth line of attack against deregulation was that it would cripple the industry's ability to obtain capital. The security of protected route certificates, labor and management contended, was crucial to the airlines' ability to raise funds on favorable terms. Absent such security, the industry would be unable to obtain needed capital in private markets. Hence, deregulation could well lead to increased dependence upon the public sector and, in the extreme, to nationalization.

"The foundation of the financial credit of the airlines," National Airlines warned, "has been the route certificate system. If you remove this credit keystone, the enormous financial resources needed by the airlines will be diverted to better risks."[61] "If we impair the value of [route certificates] in an industry which is cyclical by nature," United Airlines claimed early in the hearings, "we will create a high degree of risk for financial institutions which could bring new investment in the industry to a halt."[62] The even-

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> We have heard testimony and apparently this is to ease the minds of those who are against deregulation, that there are certain airlines who have come out for deregulation, and indeed United Airlines has testified in favor of deregulation.
>
> I would suggest that if General Motors were in favor of some change in the automotive industry, every other automotive company were against it, we would not find the Government so widely behind that particular act. I think the fact that United Airlines is the largest airline in the industry, in fact the GM of the airline industry, the fact that they are for it should raise caution in everyone's mind.

Id. pt. 1, at 308. Labor, of course, immediately took up the shibboleth. As one spokesman for the Machinists stated:

> [O]ut of all the carriers there is only one carrier, to my knowledge, that is backing deregulation, and that is United Airlines. And, like Mr. Slattery said, from TWA, beware if United Airlines is backing it. And I have to agree with that statement, even though I represent the people on that carrier.

Id. at 335 (testimony of William Scheri, Assistant General Chairman, International Association of Machinists and Aerospace Workers).

60. *Anderson Hearings* (1977), *supra* note 26, pt. 1, at 330-31 (testimony of William Scheri, Assistant General Chairman, International Association of Machinists and Aerospace Workers).
61. *Id.* pt. 2, at 2055 (testimony of E.F. Dolanskey, President and Chief Operating Officer, National Airlines).
62. *Cannon Hearings* (1976), *supra* note 27, at 535 (statement of Edward E. Carl-

tual outcome, according to Eastern Airlines, would find carriers increasingly dependent upon the public sector, i.e., nationalization.[63]

Labor's position on this issue closely tracked that taken by management. "Free entry and exit," the Airline Pilots Association warned, "would have a serious adverse effect on the ability of the industry to attract capital necessary to finance the development of new technology . . . ."[64] "New equipment and new technology," as a spokesman for the Airline Clerks explained, "require steady, reliable sources of capital . . . . To introduce the insecurity of unregulated competition into this equation would cause our sources of

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son, Chairman and Chief Executive Officer, United Airlines). Upon reflection, however, United concluded that the adverse effects of continued regulation outweighed any negative impact of deregulation:

> Industry profits experienced over the past 20 years are no longer adequate to keep the system going. For almost two years, United's senior officers have engaged in painstaking examination and discussion of this paramount issue. We have attempted, to the best of our ability, to find a solution within the limits of present regulation. My competent associates, who built this large and respected airline, could find only partial remedies among all the options available today. Our examination showed us many avenues that are available to managements of other American firms to restore adequate earnings levels. Since these solutions are not open to us under current regulation, we began to consider regulatory change as the instrument to improve the outlook for our customers, our shareholders and our employees.
>
> What is wrong with present regulations? In our view, it is the way our regulators have handled the two key questions of pricing and entry. Under existing regulation there is no . . . reasonable prospect that earnings could improve to the point where carriers can earn a rate of return that will restore the credit of our industry and enable it to attract much needed capital.

Anderson Hearings (1977), *supra* note 26, at 1362 (statement of Richard J. Ferris, President, United Airlines).

63. *Cannon Hearings* (1976), *supra* note 27, at 598 (statement of Frank Borman, President and Chief Executive Officer, Eastern Air Lines). Alternatively, Delta argued that oligopolistic concentration would result from the uncertainty of deregulation and its impact on the supply of capital:

> If airline routes were insecure, either in the sense that the airline were not obligated as it is today by the certificate to serve the routes over which its operations have been found to be needed or, even more importantly, in the sense that the degree of expected competition were largely unpredictable, the airline business would be highly insecure. *Ipso facto*, the sources of borrowed funds would dry up for all but the few very strongest carriers. This is but one of many ways in which any significant weakening of the certificate process would foster a drive toward concentration of the industry in the hands of only a few, large, strong air carriers—the very antithesis of what the reformers ostensibly seek.

Cannon Hearings (1977), *supra* note 31, pt. 2, at 895 (statement of R.S. Maurer, Senior Vice President and General Counsel, Delta Airlines).

64. *Cannon Hearings* (1976), *supra* note 27, at 840 (statement of John J. O'Donnell, President, Air Line Pilots Association).

badly needed funds to disappear . . . ."[65] Like management, labor portrayed the eventual outcome as an "airline system resembling that of Europe where carriers are owned by the central governments."[66] "Deregulation", in other words, "could well be the first step toward nationalization of the airline industry."[67]

6. Threat to Labor

Management and labor also opposed deregulation on the grounds that it would directly and severely harm labor. The threat, both groups warned, was two-fold: (1) a massive dislocation and unemployment of relatively immobile employees as routes between smaller communities across the country were eliminated; and (2) the gains of organized labor would be seriously undermined as new, low-cost, nonunionized carriers entered the industry.

The president of Eastern Airlines warned that "thousands of jobs are at stake."[68] Similarly, a TWA spokesman feared a "severe" impact upon the industry's 300,000 employees and pointedly noted what he interpreted as "the contradiction of espousing fuller employment while supporting measures that would seriously jeopardize countless highly skilled jobs in a vital industry."[69] Particularly significant, according to one carrier, was the immobility of labor:

> A large proportion of the jobs in our industry are associated with a high degree of specialized skill, acquired through complex training and long experience. The possibility of retraining workers with these skills for employment at a comparable level in other industries is minimal. In any meaningful sense, their career would be at an end.[70]

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65. *Cannon Hearings* (1977), *supra* note 31, pt. 4, at 1908 (statement of Ronald H. Stout, System Board 451, Brotherhood of Airline Clerks).
66. *Anderson Hearings* (1977), *supra* note 26, pt. 1, at 329 (statement of William Scheri, Assistant General Chairman, International Association of Machinists).
67. *Id. See also Cannon Hearings* (1976), *supra* note 27, at 1271 (statement of Francis A. O'Connell, Legislative Director, Transport Workers Union).
68. *Anderson Hearings* (1976), *supra* note 28, at 455 (statement of Frank Borman).
69. *Cannon Hearings* (1977), *supra* note 31, pt. 1, at 468, 471 (statement of C.E. Meyer, Jr., President and Chief Executive Officer, Trans World Airlines).
70. *Id.* at 468. *See also Cannon Hearings* (1976), *supra* note 27, at 1014 (statement of Paul R. Ignatius, President, Air Transport Association). Here, too, United subsequently reversed course:

> Abandonment has also been equated with job loss and is loosely used as an argument against regulatory reform. Here, again, we find that the argument has no merit, and the facts demonstrate otherwise. Under the Federal Aviation Act and existing regulation our certificated industry has been shrinking, not growing. There are now almost 10,000 fewer jobs than there were in 1969. Under those

Deregulation, management representatives foreboded, constituted a mortal challenge to the very existence of organized labor and the gains it had painstakingly made in the past. Said the president and chairman of the board of American Airlines: "The pending proposals would encourage the organization of new airlines free from many of the constraints contained in current airlines collective bargaining agreements. The proposals thus threaten the job security of thousands of airline employees."[71] The president and chief operating officer of National Airlines agreed that "[l]egislative changes would thereby revoke union gains made over the years,"[72] and the president of Texas International Airlines asserted that deregulation "would be an attack on the labor movement in this country."[73]

Labor, of course, concurred with management's assessment. "[A]irline deregulation," the Teamsters warned, "will lead to long-term unemployment, employee dislocation and hardship, lower wages, reduced benefits and poorer working conditions for those workers lucky enough to retain their jobs in the air transportation industry."[74] The Machinists were convinced that deregulation would "throw thousands of skilled and dedicated workers out on the streets."[75] "As a result of rate wars that would rage in an atmosphere of unrestricted competition," the Airline Clerks concluded, "there would be fewer airlines surviving and fewer airline members."[76] And, like the presidents of air carriers, labor spokesmen feared a direct threat to their organizations:

> [Deregulation] would involve the very real threat of lower wages and reduced earnings potential as some carriers would eventually be replaced by new or unorganized carriers who by the payment of substandard wages and benefits and poorer service would . . . [wipe] out the gains gained over many years by union members.[77]

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circumstances we find it difficult to understand how an expansionary bill would result in job loss in a business which has already shrunk!

Anderson Hearings (1977), *supra* note 26, at 1366 (statement of Richard J. Ferris, President, United Airlines).

71. *Cannon Hearings* (1977), *supra* note 31, at 1396 (statement of Albert V. Casey).
72. *Anderson Hearings* (1977), *supra* note 26, at 2054 (testimony of E.F. Dolanskey).
73. *Cannon Hearings* (1976), *supra* note 27, at 510 (statement of Francisco A. Lorenzo).
74. *Cannon Hearings* (1977), *supra* note 31, pt. 2, at 711 (statement of Frank E. Fitzsimmons, General President, Brotherhood of Teamsters).
75. *Id.* at 1324 (statement of John F. Peterpaul, General Vice President, International Association of Machinists and Aerospace Workers).
76. *Id.* at 1325 (statement of Allen W. McCauley, Director, Air Transport Division, Brotherhood of Airline Clerks).
77. *Id.* at 1324-25 (statement of Allen W. McCauley, Director, Air Transport Division, Brotherhood of Airline Clerks). *See also id.* at 1333 (statement of John J. O'Donnell, President, Air Line Pilots Association).

7. Adverse Impact Upon Related Industries

Management and labor further attacked deregulation on the grounds that it would adversely affect such related fields as aircraft manufacturing and airport construction, operation, and financing. The financial health of these industries, management and labor claimed, depended on the financial well-being of the airline industry. The instability and financial uncertainty generated by deregulation of airlines, they argued, would undermine the economic viability of aircraft production and airport operations.

"A healthy airline industry is absolutely essential to the aircraft airframe and engine manufacturers," TWA asserted, "[a]nd these manufacturers are absolutely essential to our basic economy and to our national defense."[78] United, prior to reversing its position on deregulation, stated:

> Today United is working closely with Boeing and United Aircraft in the design specifications of a new version of the highly successful 727 jet, the dash 300, which promises greater fuel efficiency and quieter operations — both clearly in the interest of airline passengers and communities. Who would afford the sort of long range study effort and massive capital commitment associated with this sort of activity if the air transportation industry is placed in a highly uncertain transitional posture by deregulation? Would aerospace manufacturers invest in R&D efforts to sell to a fragmented and unstable market?[79]

The effect on employment would be disastrous, the carriers contended. "[W]hat happens," the president of TWA agonized, "to the hundreds of thousands of employees who are involved in supporting the airline industry in the production of aircraft and related equipment if the industry cannot attract the capital necessary[?]"[80]

Labor spokesmen also pointed to the allegedly severe consequences for aircraft manufacturers. Deregulation of air transport service would "discourage modernization of aging airline fleets" according to the Executive Council of the AFL-CIO.[81] The Transport Workers Union also warned that "aircraft development and manufacturing will be seriously hampered by lack of funding."[82] "Not only is [impaired capital raising ability] an unfortunate situation for the airlines who must begin now to plan for future equipment," the Airline Pilots concluded, "it also threatens aeronautical

78. *Cannon Hearings* (1976), *supra* note 27, at 663 (statement of Charles C. Tillinghast, Jr., Chairman and Chief Executive Officer, Trans World Airlines).
79. *Kennedy Hearings* (1975), *supra* note 33, at 633 (prepared statement of Andrew De Voursney, United Airlines).
80. *Cannon Hearings* (1977), *supra* note 31, pt. 1, at 468 (statement of C.E. Meyer, Jr.).
81. *Id.* pt. 3, at 1322.
82. *Id.* at 1326 (statement of Francis A. O'Connell, Legislative Director, Transport Workers Union).

research and development of new technology aircraft and engines."[83]

Air carriers and labor pointed to airport construction and improvement as another field whose economic viability would be jeopardized by the elimination of route certification and control. An American Airlines spokesman explained:

> Most runway and terminal improvements are financed through the sale of airport revenue bonds. Long-term airline commitments set forth in airport use agreements and terminal leases provide the basis under which cities issues [sic] these securities.
>
> With the uncertainties created by deregulation, airlines will be less willing to make these long-term commitments, since they will be unable to forecast whether and to what extent they will still be operating by long-term commitments.[84]

Deregulation, Delta predicted, would "disrupt current and committed airport financing," "precipitate a series of financial crises for cities," and "make it virtually impossible to finance airport improvements and future development."[85]

Union representatives also focused on the perilous consequences for airport construction and improvement. "Planning for airport improvements and development," the Airline Pilots Association argued, "would be significantly disrupted. Airport operators rely heavily on long term commitments from the airlines to underwrite the financing of terminal and other related development. The uncertainties posed by the liberal entry and exit provisions of the various deregulation bills would discourage airlines from entering into extended contractual arrangements."[86] The AFL-CIO's Executive Council stated that airport construction and improvements would be "jeopardized,"[87] while the Transport Workers Union contended that free entry and exit would "all but destroy airport management's ability to plan and finance their facilities."[88]

8. Threat to Safety

Management and labor also jointly fought deregulation on the grounds that it would threaten the safety of the flying public. Both claimed that competition would pressure carriers—particularly new entrants—to cut corners on safety. Although routes and fares,

83. *Democratic Platform Address*, *supra* note 30, at 11.
84. *Cannon Hearings* (1976), *supra* note 27, at 521 (statement of Albert V. Casey, Chairman and President, American Airlines).
85. *Id.* at 699 (statement of R.S. Maurer, Senior Vice President, General Counsel and Secretary, Delta Airlines).
86. *Id.* at 840 (statement of John J. O'Donnell, President, Air Line Pilots Association).
87. *Cannon Hearings* (1977), *supra* note 31, at 1322.
88. *Id.* at 1326 (statement of Francis A. O'Connell, Legislative Director, Transport Workers Union).

on the one hand, and safety, on the other, traditionally have been regulated by different government agencies, carriers and unions agreed that economic and safety regulations were inseparable.

Western Airlines, for example, testified that "those who live on the fringe of the business will always have a tendency to cut corners" with regard to safety.[89] United Airlines initially warned that "marginal, or cutrate, operators may be tempted to cut corners on safety when under economic pressure."[90]

Graphic treatment of the issue, however, was left to labor. As the Airlines Pilots Association warned:

> [N]ew entrepreneurs, anxious to be successful in the airlines business, would not have the commitment or the financial resources to achieve the margin of safety which must be maintained in today's sophisticated air transport environment. The FAA, with its limited resources, would be hard pressed to handle their certification, monitoring and enforcement responsibilities to insure compliance by new operators in a manner consistent with the traveling public's expectations.[91]

Other labor groups were less restrained. The Machinists claimed[92] that "Fly-by-night airlines will become a reality," while the Transport Workers Union castigated deregulation as "a cruel experiment with passenger safety."[93]

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89. *Id.* pt. 2, at 550 (statement of Arthur F. Kelly, Chairman and Chief Executive Officer, Western Airlines).

90. *Kennedy Hearings* (1975), *supra* note 33, at 632 (statement of Andrew De Voursney, United Airlines). Two years later, however, United reversed its stance on the safety issue:

> United doesn't share these concerns. We do not believe that regulatory reform will create an environment in which carriers will shave costs by compromising safety. If the dynamics of the market place cause some carriers to decline or fail, we do not believe that maintenance or safety will be compromised from existing standards. In past periods of economic difficulties, safety was not compromised. There is simply no evidence that carrier management or the FAA has in the past or will in the future hold safety hostage to economics.
>
> New carriers, managed by people found to be fit, willing and able to participate in air transportation, should pose no threat to safety. These firms will typically employ experienced airline operating employees. They will be subject to all safety rules and regulations of the act as administered by FAA.

Anderson Hearings (1977), *supra* note 26, at 1368-69 (statement of Richard J. Ferris, President, United Airlines).

91. *Anderson Hearings* (1977), *supra* note 26, at 1586 (statement of John J. O'Donnell, President, Air Line Pilots Association International).

92. *Id.* pt. 1, at 406 (testimony of Edward Imondi, Legislative Committee, International Association of Machinists and Aerospace Workers).

93. *Id.* pt. 2, at 1579 (statement of Francis A. O'Connell, Legislative Director, Transport Workers Union). *See also id.* at 1573 (statement of William G. Mahoney, Counsel, Brotherhood of Railway and Airline Clerks, International Association of Machinists, and Transport Workers Union); *Cannon Hearings* (1977), *supra* note 31, pt. 2, at 711 (statement of Frank E. Fitzsimmons, Gen-

9. Favorable Evaluation of Performance Under Regulation

Finally, management and labor attacked deregulation legislation on the grounds that the industry had performed admirably under CAB regulation. To support their argument, management and labor compared the secular trend of airfares with that of consumer prices generally; compared airfares for equivalent routes in the United States and abroad; and pointed to discount fares as evidence of effective price competition. They concluded that regulatory theory and legislation were sound; whatever problems remained were merely those of administrative fine-tuning.

Eastern Airlines, for example, argued that average revenues per air passenger mile increased 37 percent from 1950 to 1975, while the consumer price index rose 73 percent over the same period.[94] In like vein, a spokesman for the Machinists pointed to a 24 percent increase in airfares between 1948 and 1977 as compared with a 146 percent rise in the consumer price index.[95]

Representatives of both groups presented similar comparisons of United States and foreign airfares. The president of American Airlines testified that "U.S. airfares are also a bargain when compared with fares elsewhere in the world. For example, a ticket between Dallas and Detroit costs $94 (including a $7 tax), while the fare between London and Lisbon, a comparable distance, is about $165."[96] A spokesman for the Transport Workers Union agreed: "We also have the lowest domestic fares when compared with foreign fares."[97]

As evidence of effective competition, management and labor alike cited the availability of discount fares in the industry. According to Delta:

> An extensive assortment of excursion fares, military discounts, and the like are also offered by the scheduled carriers, as are a selection of charter fares. This form of airline price competition has led to hundreds of varying combinations of fares offered by different carriers, with pricing differences based on such factors as time of day, season of the year, length of stay, and length of haul.[98]

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eral President, Brotherhood of Teamsters); *id.* pt. 3, at 1322 (statement by AFL-CIO Executive Council).

94. *Cannon Hearings* (1976), *supra* note 27, at 590 (testimony of Frank Borman President and Chief Executive Officer, Eastern Airlines).

95. *Anderson Hearings* (1977), *supra* note 26, pt. 1, at 332 (testimony of William Scheri, Assistant General Chairman, International Association of Machinists and Aerospace Workers).

96. *Cannon Hearings* (1976), *supra* note 27, at 517 (statement of Albert V. Casey).

97. *Id.* at 1272 (statement of Francis A. O'Connell, Legislative Director, Transport Workers Union).

98. *Id.* at 694 (statement of R.S. Maurer, Senior Vice President and General Counsel, Delta Airlines).

Likewise, the Airline Pilots Association argued that "deregulators refuse to take account of the wide range of discount fares which the airlines now offer to the price-sensitive air traveler."[99]

Finally, management and labor (with the eventual exception of United) agreed in their assessment of the overall soundness of the legislation under which the industry had been regulated. An Eastern spokesman, for example, concluded that "we have a good system that needs to be improved, not a bad system that needs to be abandoned."[100] Labor agreed. "[T]he problem," according to the Airlines Pilots Association, "does not lie with the Federal Aviation Act, but rather with the administration of that law."[101] Or, as a spokesman for the Machinists put it:

> I know that we have all, including labor, complained about the CAB and other regulatory reforms in the agency, and the carriers [have] likewise. But I would suggest that we also complain about our relatives, mothers-in-law and what not, but we don't intend to throw them away to get a new one, we just suggest that they correct some of their own faults.[102]

10. Summary: Airlines

Having beneficially accommodated itself to a cost-plus climate of governmentally-created and governmentally-enforced cartelism, vertical power thus coalesced in tacitly collusive fashion so as to shield itself from deregulation and competitive encroachment. The arguments relied upon by management and organized labor in this collective effort were strikingly, if not suspiciously parallel, and at times well-nigh indistinguishable.

Despite labor-management's protestations, the Airline Deregulation Act—calling for phased reductions of CAB control over routes, rates, entry, mergers, and, indeed, for the "sunsetting" of the CAB itself—was enacted in 1978.[103] Given the severe economic recession which set in shortly thereafter, it is difficult, as the General Accounting Office has recently concluded, "to judge the industry's performance under deregulation until it has had more operating experience."[104] For their part, carriers have since agreed

99. *Id.* at 841 (statement of John J. O'Donnell, President, Air Line Pilots Association).

100. *Cannon Hearings* (1977), *supra* note 31, pt. 2, at 819 (statement of Frank Borman, President and Chief Executive Officer, Eastern Airlines). *See also id.* at 881 (statement of R.S. Maurer, Senior Vice President and General Counsel, Delta Airlines).

101. *Id.* pt. 3, at 1335 (statement of John J. O'Donnell, President, Air Line Pilots Association).

102. *Id.* pt. 4, at 1843-44 (statement of Charles Easley, President and District Chairman, Lodge No. 143, International Association of Machinists).

103. Airline Deregulation Act of 1978, Pub. L. No. 95-504, 92 Stat. 1705 (1978).

104. U.S. GENERAL ACCOUNTING OFFICE, THE CHANGING AIRLINE INDUSTRY: A STATUS REPORT THROUGH 1980 at 1 (1981).

that the Deregulation Act has enabled them "to more effectively react and to better manage their resources in these extremely difficult circumstances."[105] Indeed, management's recent effort to repeal labor protection provisions in the Deregulation Act, and organized labor's opposition to such attempts, appears of late to have driven a wedge between these two power blocs.[106] However, as our discussion of trucking *infra* will demonstrate, facile conclusions as to the fragility of coalescing vertical power and its impotence in the face of legislative deregulation may be fraught with premature optimism.

B. Trucking

Regulation of the interstate trucking industry by the Interstate Commerce Commission (ICC) commenced in 1935 with passage of the Motor Carrier Act.[107] The ostensible goals were three-fold: (1) to promote safe, adequate, economical and efficient transportation; (2) to encourage sound economic conditions in transportation; and (3) to encourage reasonable rates without unreasonable discrimination or unfair destructive competition practices.[108] As would be the case in airlines, entry into trucking and the number of rivals

105. *Effects of Airline Deregulation and Legislation to Advance the Date for Sunset of the Civil Aeronautics Board: Hearings on H.R. 4065 Before the Subcomm. on Aviation of the House Comm. on Public Works and Transportation*, 97th Cong., 1st Sess. 189 (1981) (statement of Paul R. Ignatius, President, Air Transport Association).

106. *Cf. id.* at 222-24 (statement of Paul R. Ignatius, President, Air Transport Association); *id.* at 657-70 (testimony of Linda Puchala, President, Association of Flight Attendants); *id.* at 701-10 (joint statement of Brotherhood of Airline Clerks, Flight Engineers' International Association, International Association of Machinists, and Transport Workers Union); *id.* at 711-19 (statement of Air Line Pilots Association).

107. Ch. 498, 49 Stat. 543 (1935).

108. These objectives became part of "The National Transportation Policy" stated in the Transportation Act of 1940:

> It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent advantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions; —all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service and of the national defense. All of the provisions of this Act shall be

were controlled through certificates of operating authority issued by the Commission. Similarly, the Commission was empowered to control rates charged by regulated trucking firms. The rates presented for Commission review, however, were collectively arrived at between carriers acting in collegial fashion through rate bureaus— i.e., "trade associations of regulated carriers"[109] exempt from antitrust prosecution.

As proved to be the case in the airline industry, regulation of trucking in practice promoted the private interests of established and entrenched carriers rather than the public interest in efficient and economical transportation service. According to Professor Machlup, "The results of the restriction of entry and the regulation of rates in the trucking industry have been to reduce the number of trucking firms; to encourage the growth of larger size firms; to facilitate, nay, render necessary, collusive trade association activity, especially with regard to rate making; to restrict independent action on the part of smaller truckers; and to increase the level of rates."[110] "In this field," he concluded, "it is public policy to restrain competition, to suppress it through thorough-going regulation by government agencies and private associations."[111]

Triggered by widespread criticism of what came to be considered a governmentally-created and governmentally-sanctioned cartel, a series of Congressional hearings were begun in the late 1970's to consider deregulation of the industry. These hearings provided a forum in which management and organized labor mounted their collective assault on deregulation in a joint effort to preserve and protect the regulatory status quo. Their arguments

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administered and enforced with a view to carrying out the above declaration of policy.

Transportation Act ch. 722, 54 Stat. 899 (1940) (quoted in D. PEGRUM, PUBLIC REGULATION OF BUSINESS 603 (rev. ed. 1965)).

109. *Kennedy Report* (1980), *supra* note 17, at xvi. This report noted that

> The ICC made virtually no effort to examine rate bureau operations until 1972, some 24 years after passage of the Reed-Bulwinkle Act. In that year, and later in 1976, the Commission examined the operating practices of a total of six general freight rate bureaus. Though limited in scope, these inquiries nonetheless revealed serious violations of the ratemaking agreements on the part of several of the bureaus. The results of these preliminary inquiries, together with congressional pressure for increased ICC scrutiny of rate bureau activities, led to the institution of a formal investigation of rate bureaus. This proceeding resulted in several procedural changes in rate bureau operations; but the Commission also concluded that antitrust immunity for collective ratemaking activities continued to be warranted.

Id. at xxii.

110. F. MACHLUP, THE POLITICAL ECONOMY OF MONOPOLY 298 (1952).

111. *Id.* at 299.

were strikingly similar to those used earlier by their counterparts in the airline industry.

1. Deterioration of Service for Smaller Communities

Paralleling management and labor attacks on the deregulation of airlines, a major argument raised by management and organized labor against deregulation of the trucking industry was that it would decimate service to small- and medium-sized communities across the nation. Certificates of operating authority, both groups asserted, entailed a public responsibility to serve all areas regardless of their relative profitability, while high-density, high-profit routes provided the revenues necessary to underwrite less profitable service to small communities. With free entry and exit, management and labor argued, entrants would concentrate on the most lucrative routes, rates on these routes would decline, but carriers would be both unable and unwilling to subsidize service to small communities. Thus, service to the latter would be severely curtailed while rates would rise. As was the case with airlines, both groups pointed out the unfavorable consequences that such deterioration of service allegedly would work upon the economic viability of hundreds of afflicted communities.

"The carefully structured and controlled evolution of the cost of motor freight transportation," Interstate Motor Freight System argued, "has encouraged and helped foster the ability of every hamlet and every metropolis to reach the total markets of this country."[112] Specifically, the industry's trade group, the American Trucking Associations (ATA), explained:

> Today's regulated for-hire motor carrier is carrying the full burden of the growing volume of small shipments. He is also the only transportation service available for many thousands of small communities that are now completely dependent upon truck transportation.
>
> These operations, frequently consisting of small shipments to off-line points, are not the most profitable. In many cases, the traffic is marginal. But the carrier is able to maintain this service, and carry out the full obligations of his authority, because he can balance the less desirable operations with the more profitable traffic moving between major traffic centers.[113]

Without entry controls, Briggs Transportation Company warned:

112. *Oversight of Freight Rate Competition in the Motor Carrier Industry: Hearings Before the Subcomm. on Antitrust and Monopoly of the Senate Comm. on the Judiciary*, 95th Cong., 1st and 2d Sess., vol. 1, 165 (1978) (prepared statement of James T. Hine, III, Chief Executive Officer) [hereinafter cited as *Kennedy Hearings*].

113. *Economic Regulation of the Trucking Industry: Hearing on S. 1400 and S. 2245 Before the Senate Comm. on Commerce, Science, and Transportation*, 96th Cong., 1st Sess., pt. 1, 209 (1979) (statement of American Trucking Associations) [hereinafter cited as *Cannon Hearings*].

> The larger companies would drop hundreds and thousands of the smaller communities if they had to be out there in the total free marketplace to try to support the profitability of their companies.
>
> Right now, it is a part of a system, and they recognize their common carrier responsibility or their contract carrier responsibility, whichever it may be, in that this is part of what makes the system work. If it is all out in the free marketplace, you can bet your bottom dollar that they are not going to look twice at those little places that do not produce a profit on that particular stop.[114]

Heavily, if not exclusively, dependent upon motor freight service, the "primary casualties" of deregulation, regulated carriers concluded, "would be small communities."[115]

Labor spokesmen closed ranks behind management's argument that small and intermediate communities would be the main victims of deregulation. "In recent months," the president of the Teamsters, Mr. Fitzsimmons, explained to Congress:

> [T]he Interstate Commerce Commission has administratively debased the value of adequate service in the area of entry. As a result, the quality and quantity of service provided by common carriers have been adversely affected. If a balanced approach to entry is not restored by Congress, smaller cities, towns and communities and shippers will not receive the service on which they have relied in the past. If Congress fails to include a meaningful entry requirement, economic self-restraint will force carriers to concentrate on transportation between the large city pairs where the greatest equipment utilization and balanced movements can be obtained. Much of the service presently provided to intermediate communities would be dropped because it is either unprofitable or less profitable.[116]

Higher transport rates, both management and labor predicted, would accompany the deterioration of service to thousands of afflicted communities. "Small communities," an official of the Wilson Trucking Company warned, "will have to bear a higher burden of transportation costs to replace revenues depleted by cutthroat competition in major traffic lanes."[117] Thus, not only would small-town service be curtailed, according to the American Trucking As-

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114. *Examining Current Conditions in the Trucking Industry and the Possible Necessity For Change in the Manner and Scope of Its Regulations: Hearings on H.R. 6418 and Related Bills Before the Subcomm. on Surface Transportation of the House Comm. on Public Works and Transportation*, 96th Cong., 2d Sess., pt. 3, 626 (1980) [hereinafter cited as *Howard Hearings*]. *See also Cannon Hearings*, *supra* note 113, at 210 (statement of American Trucking Associations).

115. *Cannon Hearings*, *supra* note 113, at 218 (statement of American Trucking Associations). *See also Kennedy Hearings*, *supra* note 112, at 248 (prepared statement of Samuel G. Herold, Executive Vice President, Middle Atlantic Conference).

116. *Howard Hearings*, *supra* note 114, at 762-63. *See also Cannon Hearings*, *supra* note 113, pt. 5, at 1621-28 (statement of James Jesinski, Secretary-Treasurer, Local No. 200, Brotherhood of Teamsters).

117. *Kennedy Hearings*, *supra* note 112, at 167 (prepared statement of William J. Jones, Vice President, Wilson Trucking Co.). *See also id.* at 165 (prepared

sociations, "even that service which is still available would certainly be at a higher rate than today."[118] Again, organized labor's position tracked that of management. "Even degraded service to small- and medium-sized communities," one Teamster spokesman argued, "would become far more expensive in the absence of effective [i.e., restrictive] entry provisions."[119] "If the medium- and small-size cities are to receive any service at all," the Machinists echoed, "it will be presented to them at almost prohibitive rates."[120]

In addition, management and labor made a concerted effort to point out the broader economic significance of these portended developments. An official of Pacific Intermountain Express, for example, warned that deregulation would "further aggravate the competitive disadvantages of . . . small communities,"[121] while a vice president of Consolidated Freightways remarked that "[t]he small producer or manufacturer who located his plant in a rural area, in reliance upon the availability of regulated truck service and a stable uniform rate structure, will not be comforted to know that the loss of transportation service which forces him out of business is a 'benefit of competition.' "[122] Similarly, the Teamsters emphasized that "[s]hippers in the intermediate cities would be at a disadvantage competing with those located in the large metropolitan areas,"[123] while the Machinists, representing "tens of thousands of employees working in small manufacturing industries in rural areas that are highly dependent upon regulated carriers to move their products," warned that these jobs "could be seriously affected should deregulation result in loss of trucking for their particular communities."[124]

2. Competition Would be Wasteful and Inefficient

A second argument made by both groups in their attack on de-

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statement of James T. Hite, Chief Executive Officer, Interstate Motor Freight System).

118. *Cannon Hearings*, *supra* note 113, at 100 (testimony of Bennett C. Whitlock, Jr., President, American Trucking Associations).

119. *Id.* pt. 5, at 1621 (statement of James J. Jesinski, Secretary-Treasurer, Local No. 200, Brotherhood of Teamsters).

120. *Id.* pt. 1, at 244 (statement of John F. Peterpaul, Vice President, Transportation, International Association of Machinists and Aerospace Workers).

121. *Kennedy Hearings*, *supra* note 112, vol. 3, at 1465 (prepared statement of John G. Christy, President, IU International).

122. *Id.* at 162 (statement of Gene T. West, Vice President, Traffic, Consolidated Freightways).

123. *Cannon Hearings*, *supra* note 113, pt. 5, at 1621 (statement of James Jesinski, Secretary-Treasurer, Local No. 200, Brotherhood of Teamsters).

124. *Id.* at 1556 (statement of Andrew Kenopensky, National Automotive Coordinator, International Association of Machinists).

regulation was the contention that competition would be wasteful and inefficient. In this, management and labor agreed with one another as well as with their colleagues in the airline industry. The argument comprised two elements. First, free entry, it was alleged, would merely lead to wasteful excess capacity and fuel consumption as more carriers competed to haul a fixed volume of traffic. Second, concentration of entry in the most lucrative routes would destroy the efficiencies of balanced freight hauling which management and labor claimed to have been engineered into the industry by the Interstate Commerce Commission (ICC). Ironically, they concluded, competition would impair—not promote—economic efficiency.

"Unlike potential volumes of passenger traffic," the American Trucking Associations (ATA) opined:

> Freight traffic is a pie of relatively fixed dimensions. Its size is controlled by the general level of the economy and not by the number of people willing to carry freight. The market for transportation is a derived demand. Carriers do not create freight. They can only carry what the economy produces.[125]

The ATA continued:

> The elimination of entry controls and the ensuing entry into the industry of thousands of new truck operations, the need for which had not been established through application of the test of "public convenience and necessity" would create excess capacity. The inevitable result would be a marked increase in empty truck mileage.[126]

Moreover, Mr. Herold, speaking for the Middle Atlantic rate conference, stated: "[I]f entry was free to anyone . . . then the full service carriers who are trying to provide a full transportation service to all points in the country are going to have less traffic to handle and they are going to have higher costs and, therefore, higher rates."[127] The outcome, according to the testimony of carrier representatives, would be "wasted mileage coming from too many trucks chasing a limited amount of traffic,"[128] presenting "the real danger of excess capacity with resulting inefficiencies, particularly in fuel usage."[129]

Organized labor's position on this point was, at times, virtually indistinguishable from that of management. "The volume of traffic to be moved by motor carriers is relatively stable," a Teamster spokesman claimed, "and, even if the rates were lowered, the vol-

125. *Id.* pt. 1, at 209 (statement of American Trucking Associations).

126. *Id.* at 218.

127. *Kennedy Hearings*, *supra* note 112, at 222.

128. *Cannon Hearings*, *supra* note 113, at 218 (statement of American Trucking Associations).

129. *Id.* pt. 5, at 1806 (statement of American Trucking Associations).

ume would not increase appreciably."[130] "Because everybody and his brother is going to buy a truck," another Teamster testified, "there will be more trucks running empty than Carter has pills."[131] The adverse effect of free entry upon the alleged balance of freight movement accomplished under regulation—an effect cited by management—was also emphasized by Teamster president Fitzsimmons:

> Permitting the non-regulated carriers who do not have the obligation to serve all shippers and all communities, large or small, to take selected backhauls of commodities would disrupt the balanced movements that the regulated carriers have laboriously achieved, thereby making for-hire carrier service less efficient and more costly to the general public.[132]

"And, in an energy-starved Nation," another labor spokesman pointed out:

> [D]eregulation would put thousands more trucks, all burning critically short fuel, out on the road chasing the same amount of freight and greatly increasing the empty truck miles. With the problems this Nation is going to have in meeting our basic needs with increasingly short energy supplies, the logic of that totally escapes me.[133]

Thus, organized labor agreed with management that "[e]mpty mileage would increase, equipment would be underutilized and our scarce supplies of fuel would be wasted."[134]

3. Industry Chaos

Management and labor further argued that deregulation of trucking would usher in confusion and chaos. While the details varied, the thrust of the argument was once again remarkably similar to that utilized by airline carriers and unions. Rate bureaus and the ICC, it was claimed, jointly functioned as a clearinghouse in which rates were distilled into uniform, comprehensible categories which were stable and predictable. By eliminating this machinery, deregulation would result in a bewildering array of billions of individually-determined rates which would fluctuate wildly and unpredictably while generating blizzards of paperwork. Moreover, joint routes and rates between interconnecting carriers would disappear, and rate discrimination would become ram-

130. *Id.* pt. 1, at 120 (statement of Frank E. Fitzsimmons, General President, Brotherhood of Teamsters).

131. *Id.* pt. 2, at 525 (testimony of Joe Pellicciotti, Secretary-Treasurer, Local No. 667, Brotherhood of Teamsters).

132. *Howard Hearings*, *supra* note 114, at 761.

133. *Cannon Hearings*, *supra* note 113, pt. 2, at 520 (statement of Walter Shea, Administrative Assistant to the General President, Brotherhood of Teamsters).

134. *Howard Hearings*, *supra* note 114, at 761 (statement of Frank E. Fitzsimmons, General President, Brotherhood of Teamsters).

pant—with large, powerful shippers able to wrest more favorable rates from carriers.

"The collective ratemaking process and the rate bureaus," Interstate Motor Freight System argued, "maintains and organizes in a structured and intelligent manner rate information that is a multiple of thousands of carriers, tens of thousands of geographic points, and literally billions of individual rates."[135] "Collective ratemaking," the American Trucking Associations added, "is the glue that holds the system together."[136]

Removal of this ratemaking function through deregulation, carriers argued, would result in an astronomical and intractably complex number of individual rates. "Without collective ratemaking," the Middle Atlantic rate bureau claimed, "we would soon have a fragmented hodge-podge: Countless thousands upon thousands of endless combinations of rates. A shipper-carrier headache. A consumer nightmare."[137] Elimination of rate regulation, then, "would create, without question, discriminatory chaos that would upset the shipping costs and retail pricing structure of the Nation"[138] while simultaneously placing "an impossible burden upon carriers and shippers to try to keep [rates] current, particularly on small carriers and shippers."[139] Moreover, any degree of regulatory oversight would be impossible. "Finally, and perhaps most significant of all," the H & W Motor Express Company concluded in this respect,

> without bureau collective ratemaking, the ICC and state regulatory agencies would be swamped by a flood of paper—hundreds of filings for every one received now. The regulatory agencies, without staff additions many times greater than they can reasonably be expected to receive, simply could not cope with this situation.[140]

The carriers predicted that unpredictable variability of rates in an unregulated environment would compound their sheer multiplicity. "With price competition as the only criterion," according to one carrier, "the fluidity of rates would be governed solely by the

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135. *Kennedy Hearings*, *supra* note 112, at 164 (statement of James T. Hite, Chief Executive Officer, Interstate Motor Freight System).
136. *Cannon Hearings*, *supra* note 113, at 98 (testimony of Bennett C. Whitlock, Jr., President, American Trucking Associations).
137. *Kennedy Hearings*, *supra* note 112, at 250 (statement of Samuel G. Herold, Executive Vice President, Middle Atlantic Conference). *See also id.* at 244 (statement of James C. Harkins, Executive Director, National Motor Freight Traffic Associations).
138. *Id.* at 152 (testimony of James T. Hite, Chief Executive Officer, Interstate Motor Freight System).
139. *Cannon Hearings*, *supra* note 113, pt. 2, at 673 (statement of M.J. Petrina, Auto Transporters Tariff Bureau).
140. *Id.* at 653 (statement of Urban R. Haas, President, H & W Motor Express Co.) (quoting Professor Roy J. Sampson).

auction block of expedience, and uncontrolled opportunistic price changes will result not only in a deterioration of service, but will effectively destroy any semblance of rate stability."[141] According to the American Trucking Associations, there "would be such a high degree of uncertainty that businesses, small and large, would be severely hindered in the efficient planning, purchasing and marketing of goods."[142]

Management cited joint through-route services provided by, and collectively arrived at between, carriers as a further victim of deregulation. "As a general proposition," Consolidated Freightways claimed,

> joint through routes would most likely cease to exist, and shippers requiring joint service to accomplish needed transportation would have to work out their arrangements with the separate carriers and move their shipments at combinations of the carriers' separate rates. There could be no such thing as a fair, nondiscriminatory, nonpreferential rate structure under which shippers could receive equal treatment in the transportation of their supplies, materials, goods and products, and there would be no means by which the motor carriers could maintain the voluntary, integrated system of transportation which exists today.[143]

Organized labor concurred with the carriers, albeit in summary fashion. "With widely fluctuating shipping rates," one Teamster asked, "would consumer prices fluctuate—or would they be 'stabilized' at a level high enough to hedge against fluctuations?"[144] Generally, however, the union was content to defer to management. "Because of the complexity of the industry," Teamster president Fitzsimmons stated laconically, "we believe collective rate making should be allowed with respect to all rates."[145]

Compounding these chaotic effects, management and labor warned, would be the inequitable impact upon small shippers and producers, for the latter would be unable to obtain the rate reductions that larger shippers could command in a deregulated environment. "Every shipper," a spokesman for the H & W Motor Express Company claimed,

> seeks every advantage which it can get in its competitive marketplace. To the extent that its size and market position permits it to exert strong economic pressure upon a carrier in order to secure a better deal on transportation every shipper exercises its power.

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141. *Kennedy Hearings*, *supra* note 112, at 171 (prepared statement of Gerald Cole, Senior Vice President, Cole's Express).
142. *Cannon Hearings*, *supra* note 113, at 214 (statement of American Trucking Associations). *See also Kennedy Hearings*, *supra* note 112, at 260 (statement of Samuel G. Herold, Executive Vice President, Middle Atlantic Conference).
143. *Kennedy Hearings*, *supra* note 112, at 161 (statement of Gene T. West, Vice President, Traffic, Consolidated Freightways Corp.).
144. *Howard Hearings*, *supra* note 114, pt. 1, at 148 (statement of Edward R. Toliver, Coordinator, Joint Council 3, Teamsters).
145. *Id.* pt. 3, at 769.

> One of the fundamental purposes of transportation regulation is to try to neutralize that power among shippers to protect the opportunity for the small businesses to compete with the giants. The provision in the present system of collective ratemaking for secret ballots on rate proposals is in direct furtherance of that purpose of regulation. Public disclosures of carrier votes will inevitably result in a restoration to large shippers of the power to force carriers to give them unjustified rate treatment. In today's diversified, complex economy, the resultant effect of favoritism and rate discrimination, would be to further narrow the ability of small- and medium-sized enterprises to continue in competition with industrial giants.[146]

"Under collective ratemaking," the American Trucking Associations added, "the larger shipper is no better off than the small."[147] Hence, one effect of deregulation (including removal of the antitrust immunity applied to collective ratemaking), an ATA spokesman concluded, would be a rate structure that discriminated against the small producer and shipper.[148] Indeed, he suggested that such an outcome was a prime motive underlying the support by powerful shippers for the deregulation movement.[149]

Organized labor joined with management in this line of defense of the status quo. Rate regulation, the Teamsters argued, "provides carriers with a certain amount of protection from their customers' large shippers"; thus, "[w]ithout collective ratemaking, many carriers would be at the mercy of large shippers."[150] Like management, labor spokesmen alluded to the alleged anticompetitive advantages which would accrue to large shippers: "They will get their lower rates. But the poor small shipper that is dependent upon the regulated carrier, he will not get his service—he will not get his commodities shipped because he can't get a carrier to do it."[151]

4. Predation, Concentration, and Control

A fourth argument against deregulation, also voiced by the management and labor of airlines, was that freedom of pricing would permit the largest carriers to drive others from the field, thereby resulting in increased concentration and control. The surviving oligopolists would then wield sufficient market power to

146. *Cannon Hearings*, *supra* note 113, pt. 2, at 645 (statement of Urban R. Haas, President, H & W Motor Express Co.).

147. *Id.* pt. 1, at 212 (statement of American Trucking Associations).

148. *Id.* pt. 2, at 495-96 (statement of James C. McCormick, American Trucking Associations).

149. *Howard Hearings*, *supra* note 114, pt. 3, at 626 (testimony of C. James McCormick, Senior Vice President, Briggs Transportation Co.).

150. *Kennedy Hearings*, *supra* note 112, at 181 (statement of Robert Schlieve, Secretary-Treasurer, Local 563, Brotherhood of Teamsters).

151. *Cannon Hearings*, *supra* note 113, pt. 2, at 526 (testimony of Joe Burkhard, Eastern Conference of Teamsters).

raise rates. Paradoxically, management and labor agreed, deregulation of trucking would result in less—not more—competition and higher—not lower—rates.

The American Trucking Associations argued that regulation preserved—not eliminated—competition in the industry:

> There are 16,600 ICC-regulated motor carriers. Of these, 12,453 gross $500,000 or less. Deregulation would promote concentration not competition. In the regulated motor carrier industry, the top four carriers account for 10 percent of the total revenues; the top eight, 14 percent. Compare this with other American industries, industries which are "regulated" by the general antitrust laws which deregulationists advocate as better regulators of the trucking industry than the Interstate Commerce Act.[152]

Consolidated Freightways, one of the largest carriers in the nation, expressed solicitude for the fate of its smaller rivals:

> [R]epeal of collective ratemaking would not mean the demise of CF. We would survive. But small companies would not. Were carriers unable to cooperate with one another in making rates, were it a case of every man for himself and the devil take the hindmost, the small carriers would go the way of small businesses, such as the "mom and pop" grocery stores, which do not have the resources to wage full scale economic warfare against the giants.[153]

The representative of one carrier rate bureau warned that concentration would follow a short-term period of predatory pricing: "Without regulation, I believe one could anticipate the following scenario[:] . . . predatory pricing which will eliminate the smaller and weaker carriers, resulting in a high degree of concentration."[154] "As weaker carriers are killed off," according to Mr. Jones of the Wilson Trucking Company, "there will be less restraint on rates in major traffic lanes, allowing rates to begin moving upward."[155] Thus, the American Trucking Associations concluded that "following the misleading attempt to get more competition, we will begin to get less and less."[156]

Organized labor embraced management's stance on this issue. The Machinists, for example, framed the argument against deregulation in terms virtually identical to those of management. Like company spokesmen, they drew comparisons with the structure of the automobile industry:

> We will jeopardize more smaller carriers. The American Trucking Association testified that there were 16,000 regulated carriers in America. Statistically, 80 percent are under half a million dollars. We are not talking

152. *Id.* pt. 1, at 104 (statement of Bennett C. Whitlock, Jr., President, American Trucking Associations).

153. *Kennedy Hearings*, *supra* note 112, at 162 (statement of Gene T. West, Vice President, Traffic, Consolidated Freightways Corp.).

154. *Id.* at 248 (statement of Samuel G. Herold, Executive Vice President, Middle Atlantic Conference).

155. *Id.* at 167.

156. *Id.* vol. 3, at 1516 (statement of American Trucking Associations).

> about large corporations. One of our concerns is that if we open up this regulation and ratemaking and so on, I am convinced that the larger ones are going to survive. Temporarily they will reduce prices just to put the smaller carriers out of business. When they eliminate their competition, they can charge whatever they want to. Look at the auto industry. How much competition do we have there?[157]

"How," as one Teamster exclaimed, "will competition flourish when most of the competitors are gone!"[158]

5. Inability to Obtain Capital

Management and organized labor further attacked deregulation on the grounds that it would severely damage the industry's ability to obtain the capital needed for investment and growth. A mirror image of the argument against airline deregulation, each power bloc claimed that regulatory protection provided the requisite security necessary to attract capital on favorable terms. Absent such protection, the industry would be unable to obtain adequate funding, its financial viability would deteriorate, and it could well be forced to turn to public subsidies or, worse, public ownership.

"Deregulation," the American Trucking Associations claimed,

> would have an adverse effect on the financial condition of the industry and its ability to attract the capital necessary for future growth. Modern motor carrier transportation is much more than a truck on the road with a driver behind the wheel. It is a complex business involving the latest business techniques and most modern types of equipment. The industry has generally been able to attract investment on an equal basis with other major industries. Uncertainty as to the industry's future, however, because of deregulation, would cause equity financing to become less attractive. There would be greater reliance on debt financing, and this would be at much higher levels, and not competitive with that provided other industries.[159]

Again, labor concurred: "Present efficient and well-managed carriers," the Teamsters asserted, "would have their earnings so reduced as a result of loss of backhauls and the cutthroat competition of independent owner-operators who would flood onto the highways that they would be unable to earn adequate profits, to

157. *Howard Hearings*, *supra* note 114, pt. 3, at 1241 (testimony of Andrew Kenopensky, National Automotive Coordinator, International Association of Machinists).

158. *Id.* pt. 1, at 147 (statement of Edward R. Toliver, Coordinator, Joint Council 3, Teamsters). *See also id.* pt. 3, at 763 (statement of Frank E. Fitzsimmons, General President, Brotherhood of Teamsters).

159. *Cannon Hearings*, *supra* note 113, at 221 (statement of American Trucking Associations). *See also Kennedy Hearings*, *supra* note 112, vol. 3, at 1531 (statement of American Trucking Associations).

attract capital and to pay fair wages and maintain good working conditions."[160]

Escalating the rhetoric, carriers and labor alike raised the specter of nationalization. "(T)he motor carrier industry," according to the American Trucking Associations,

> is dedicated to the concept that the country needs and should have a privately-owned transportation system . . . . Other nations throughout the world have nationalized, or semi-nationalized, their systems. Regulation in the public interest has not been tried in these countries; instead, private ownership has been abandoned in favor of nationalization.[161]

The Teamsters were more abrupt: "The movement toward nationalization of the surface transportation industry would be advanced by deregulation of truckload traffic."[162]

6. Threat to Labor

Trucking deregulation was also fought on the grounds that it would result in a deterioration of wages and working conditions. Regulated collective rate control, it was claimed, served as a shield permitting organized labor to bargain for reasonable pay and work standards. Elimination of this protective umbrella under deregulation would adversely affect labor because competition would force carriers to reduce their expenses by lowering their labor costs.

An officer of one of the largest carriers, Consolidated Freightways, for example, worried whether free entry would "encourage fair wages and equitable working conditions."[163] The Teamsters were not in doubt, said Teamster president Fitzsimmons: "What we are saying, and what we have been saying to deregulation is this: Unless there is some form of rate regulation, our members in the trucking industry will not have the opportunity to bargain for decent wages, hours and working conditions."[164] In such a situation, he added, "newly-formed non-union carriers would have a substantial advantage over union carriers and fair wages would become a thing of the past."[165] Hence, the Teamsters were "committed to retaining a regulated motor carrier industry because without

160. *Howard Hearings*, *supra* note 114, pt. 3, at 761-62 (statement of Frank E. Fitzsimmons, General President, Brotherhood of Teamsters).

161. *Kennedy Hearings*, *supra* note 112, vol. 3, at 1528-29 (statement of American Trucking Associations).

162. *Howard Hearings*, *supra* note 114, pt. 2, at 51 (statement of Frank E. Fitzsimmons, General President, Brotherhood of Teamsters).

163. *Kennedy Hearings*, *supra* note 112, vol. 3, at 1464 (statement of Gene T. West, Senior Vice President, Consolidated Freightways Corp.).

164. *Id.* vol. 1, at 184. *See also id.* at 181 (statement of Robert Schlieve, Secretary-Treasurer, Local 563, Brotherhood of Teamsters); *Cannon Hearings*, *supra* note 113, pt. 4, at 1229 (statement of Chuck Mack, Secretary-Treasurer, Local 70, Brotherhood of Teamsters).

165. *Cannon Hearings*, *supra* note 113, pt. 5, at 1850 (statement of Frank E. Fitzsimmons, General President, Brotherhood of Teamsters).

such regulation our members, over a period of time, would be reduced to working for minimum wages."[166]

7. Adverse Impact Upon Related Industries

Surprisingly, a seventh line of attack taken by management and labor against deregulation was that it would hasten the demise of an already weak rival — the railroad industry. Here, both groups demonstrated the same concern for a related industry which their counterparts had shown in arguing against airline deregulation.

"Deregulation of the motor carrier industry," the American Trucking Associations warned,

> would have repercussions in transportation far beyond the obvious effect on the motor common carrier and the services to small shippers and small communities.
>
> . . . .
>
> There is convincing evidence that, faced with hordes of individual truck operators free to pick and choose the most profitable truckload traffic at rates below those which existing carriers, rail or motor, could meet, the railroads could easily be in a far worse financial condition than that which prompted passage of the Railroad Revitalization and Regulatory Reform Act of 1976.[167]

The Teamsters followed management's lead:

> As everyone knows, rail rates already are depressed and many railroads are either in bankruptcy or subsidized by the Federal Government. If there is deregulation of truckload traffic, cutthroat competition would take further traffic from the railroads.[168]

8. Threat to Safety

Deregulation was also attacked on the grounds that it would pose a serious threat to the safety of both truck drivers and the motoring public. The threat of revoking route certificates, it was claimed, provided the only effective means for enforcing safety standards. Deregulation and the elimination of such certificates would remove this "handle" for safety enforcement, while competition would pressure companies and workers alike to cut corners recklessly. As was asserted by the airlines in their fight against deregulation, the management and labor of the trucking industry argued that deregulation would jeopardize public safety.

"Highway safety," an American Trucking Associations representative explained, "has always been a matter of prime concern in

166. *Kennedy Hearings*, *supra* note 112, at 181 (statement of Robert Schlieve, Secretary-Treasurer, Local 563, Brotherhood of Teamsters).

167. *Id.* vol. 3, at 1526-27 (statement of American Trucking Associations).

168. *Cannon Hearings*, *supra* note 113, pt. 2, at 521 (statement of Walter Shea, Administrative Assistant to the General President, Brotherhood of Teamsters).

motor carrier operations. The regulated industry takes pride in its highway safety record and its efforts to improve this record."[169] "But . . . deregulation," the ATA's spokesman, Mr. Whitlock, emphasized, "would mean that anybody, anybody, could go out and buy a truck and get on the highway."[170] This could have frightening results:

> The motor carrier who is the prime violator of safety regulations and who has denounced the 55 m.p.h. limit, as well as present hours-of-service requirements, is the type that would be unleashed upon the public highways if we had deregulation. There would be no effective safety enforcement. He would have no operating authority to revoke for consistent violations and the depressed rate structure under which he would operate would not permit the type of effective safety programs that have become the hallmark of the regulated carrier.[171]

"Highway safety," the president of Southeastern Freight Lines concluded, "will be one of the first casualties if entry controls are eliminated."[172]

In broad outline, organized labor's position on the safety issue was indistinguishable from that adopted by management. "Union drivers and regulated companies have a better [safety] record," the Teamsters argued, "primarily because the regulated carriers must maintain good safety records in order to obtain additional operating authority from the Commission or, for that matter, to preserve the authority they already possess."[173] The Machinists added that "regulated carriers are also required by present law to keep maintenance records, conduct safety inspections on vehicles, required [sic] driver 'vehicle condition reports' daily and many other safety related activities which non-regulated carriers are not required to perform."[174] Labor representatives described the adverse consequences of deregulation with respect to safety:

> We cannot be cavalier about highway safety and methods other than deregulation for achieving it. Tens of thousands of our members face the possibility of having to get up one morning and drive an 18 wheel rig over a highway newly flooded by deregulation with drivers who either don't care

169. *Id.* pt. 1, at 219-20 (statement of American Trucking Associations).

170. *Id.* at 101 (testimony of Bennett C. Whitlock, Jr., President, American Trucking Associations).

171. *Kennedy Hearings*, *supra* note 11, vol. 3, at 1521-22 (statement of American Trucking Associations).

172. *Id.* at 1459 (statement of W.T. Cassels, Jr.), *See also Howard Hearings*, *supra* note 114, at 622 (testimony of C. James McCormick, Senior Vice President, Briggs Transportation Co.).

173. *Cannon Hearings*, *supra* note 113, pt. 1, at 119 (statement of Frank E. Fitzsimmons, General President, Brotherhood of Teamsters).

174. *Id.* at 244 (statement of John F. Peterpaul, Vice President, Transportation, International Association of Machinists).

> or are driven by economic necessity to violate the Federal and State safety rules.[175]

Another Teamster warned of the effect "of flooding highways with tens of thousands of independent truckers, responsible to no one, and under extreme economic pressure to disregard highway speed limits and hours of service regulations."[176] Mr. Jesinski, also speaking for the Teamsters, alleged that deregulation, and its attendant competitive pressures "to us means loss of jobs, loss of life or serious injury."[177] The risk, Teamster president Fitzsimmons concluded, "is so great that deregulation by legislation should be rejected and deregulation by administrative action should be rolled back."[178]

9. Favorable Evaluation of Performance Under Regulation

Finally both groups argued—as did their counterparts in the airlines industry—that the industry had performed admirably under regulation. Management and labor agreed that the trucking industry was vigorously competitive both between and within the various modes of transportation; that the option of independently filing rates assured price competition despite the existence of collective ratemaking bureaus; that the trend of motor carrier rates compared favorably with broader price indices; that shippers were satisfied with the service they received; that shippers participated in the collective ratemaking process; and that claims of wasteful empty mileage due to regulation were distorted. Deregulation, in short, was quite unnecessary.

"There is an abundance of competition in transportation," Mr. West of Consolidated Freightways stated, offering as evidence the rivalry "between modes of carriage, between types of carriers within the motor carrier industry, and between carriers of the same type."[179] "We have the force of private carriage," the American Trucking Associations added, arguing that "that in itself is an economic break on the rates which a common carrier can charge."[180] The Teamsters agreed: "There are 17,000 regulated carriers, and an even greater number of private and exempt carri-

175. *Id.* at 119 (statement of Frank E. Fitzsimmons, General President, Brotherhood of Teamsters).

176. *Id.* pt. 2, at 518 (statement of Walter Shea, Administrative Assistant to the General President, Brotherhood of Teamsters).

177. *Id.* pt. 5, at 1622-23 (statement of James Jesinski, Secretary-Treasurer, Local 200, Brotherhood of Teamsters).

178. *Id.* pt. 1, at 120.

179. *Kennedy Hearings*, *supra* note 112, at 162.

180. *Cannon Hearings*, *supra* note 113, at 95 (testimony of Bennett C. Whitlock, Jr., President, American Trucking Associations).

ers. They compete with railroads, water carriers, and pipelines."[181] "It is obvious," the Teamsters concluded, "that there is abundant competition for shippers' business."[182]

Management and labor alike cited as evidence of competitiveness the option for carriers to file independent rates with collective rate bureaus. "One of the important elements that we seem to forget in collective ratemaking," the American Trucking Associations contended, "is that there is complete freedom of independent action by the motor carriers. If they would like to file a different rate, they have the right to do so."[183] "So long as that right remains," another carrier added, "the shipping public is protected from any arbitrary collective action."[184] Teamster president Fitzsimmons agreed that "[t]he law also has built-in safeguards which permit a carrier to take action independent from other members who participate in the collective rate."[185]

Remarkably, management and labor seized on identical evidence as proof of the industry's satisfactory performance under regulation, citing, *inter alia*, the trend in motor carrier rates as compared to that of prices generally. "Motor carrier regulation," Mr. Whitlock of the American Trucking Associations argued,

> has been an effective tool in combating inflation.
>
> . . . .
>
> From a base of 100 in 1967, the revenue per ton-mile of regulated motor common carriers of general freight rose to 166.2 in 1977. In contrast, the Consumer Price Index of 1977 rose to 181.5 or 15 points higher than the price of most carrier service.[186]

Said the Teamsters: "Taking 1967 as the base year equal to 100%, the wholesale price index had risen to 194.2%, the consumer price index to 181.5%, while the revenue per ton-mile of general freight carriers to 166.2% for 1977."[187]

Both groups claimed that shippers were satisfied with service under regulation. "The best test of adequacy of competition," the American Trucking Associations argued,

> lies with the users of motor truck service—the shippers. In 1975, the Department of Transportation released the results of a nationwide survey of 193 manufacturing plants covering 19 major urban areas. The survey was

181. *Id.* pt. 2, at 520 (statement of Walter Shea, Administrative Assistant to the General President, Brotherhood of Teamsters).
182. *Id.*
183. *Id.* pt. 1, at 98 (statement of Bennett C. Whitlock, Jr., President, American Trucking Associations).
184. *Kennedy Hearings*, *supra* note 112, at 167 (statement of William J. Jones, Vice President, Traffic, Wilson Trucking Co.).
185. *Id.* at 185.
186. *Cannon Hearings*, *supra* note 113, at 102.
187. *Kennedy Hearings*, *supra* note 112, vol. 2, at 1025 (letter from Frank E. Fitzsimmons to Senator Kennedy, 3 May 1978).

> designed to elicit responses as to a general evaluation of motor carrier services. More than two-thirds of the surveyed companies rated motor carriers service as quite good (65.5%) or excellent (10.4%). On the other end of the scale, less than 3 percent rated it as minimally acceptable and less than 1 percent (0.52%) rated it as unsatisfactory.[188]

The Teamsters agreed that "the services offered by [truckload] carriers have been satisfactory to shippers."[189]

Finally, both groups attacked the claim that regulation resulted in inefficiency and waste. According to the American Trucking Associations: "There is, of course, empty mileage, of the true 'backhaul' variety that naturally results from the operation of specialized trucks designed to carry specific cargos. . . . Other empty mileage results from the material imbalance of freight from one section of the country as compared to another."[190] The ATA concluded that empty mileage "comes from regional, geographic, demographic and industrial factors, not transportation regulatory policy."[191] Labor representatives agreed. Empty mileage, a Teamster spokesman argued, "is due to regional traffic imbalances and to specialized equipment that logically can haul only the freight it is designed for—for example, autos, gasoline, milk, or refrigerated foods."[192] "Obviously," the Teamsters concluded, "deregulation won't affect either of these factors."[193]

10. Summary: Trucking

So comfortably had management and organized labor come to coexist within a governmentally-cartelized environment, that they unabashedly embraced one another in a collective fight to deflect deregulation. The arguments made by each were uncannily parallel both to one another as well as to those of their counterparts in airlines.

Their collaborative efforts, however, appeared at first to have

188. *Id.* vol. 3, at 1512 (statement of American Trucking Associations).

189. *Cannon Hearings*, *supra* note 113, pt. 2, at 521 (statement of Walter Shea, Administrative Assistant to the General President, Brotherhood of Teamsters). *See also Howard Hearings*, *supra* note 114, pt. 3, at 769 (statement of Frank E. Fitzsimmons, General President, Brotherhood of Teamsters); *Kennedy Hearings*, *supra* note 112, at 160 (statement of Gene T. West, Vice President, Consolidated Freightways Corp.); *id.* at 170 (statement of Gerald Cole, Senior Vice President, Cole's Express); *id.* at 262 (statement of Vernon Farriba, Executive Vice President, Southern Motor Carriers Rate Conference).

190. *Cannon Hearings*, *supra* note 113, pt. 3, at 217 (statement of American Trucking Associations).

191. *Id.* at 218.

192. *Howard Hearings*, *supra* note 114, pt. 1, at 147 (statement of Edward R. Toliver, Coordinator, Joint Council 3, Teamsters).

193. *Id.*

been in vain, for passage of the Motor Carrier Act of 1980[194]—calling for a shift in the burden of proof from applicants seeking operating authority to those protesting such competitive entry, narrowing the class of protestants, broadening existing operating authorities, and establishing zones of freedom within which rates could be varied without Commission hearings and sanction—seemed to presage phased deregulation of the industry. Indeed, under the liberalized administration of Chairman Gaskins, competition began to emerge as grants of operating authority increased, certificates of authority were loosened, and rate discounts of five to twenty percent were quickly established.[195] Nor, it appeared, could organized labor continue with effortless regularity to obtain magnanimous pay increases from companies previously able to automatically pass higher costs onto shippers.[196]

Companies and labor reacted to these developments in predictable—i.e., parallel, fashion. The American Trucking Associations, for example, denounced "an economist-oriented, self-destructive Commission" acting with "wanton disregard for congressional directives,"[197] while the Teamsters decried the Commission's "headlong plunge toward administrative deregulation."[198]

This continuing labor-management pressure has dampened prospects for sympathetic implementation of the deregulation statute—in part, because the Motor Carrier Act of 1980 permits what the Joint Economic Committee found to be "a broad degree of discretion in its enforcement by the ICC,"[199] and, in part, because the Reagan administration has shown pronounced receptivity to the industry's complaints regarding competition. Thus, it is noteworthy that the President appointed Reese Taylor as chairman of the Commission, thereby making good a campaign promise to the industry to "pick commissioners with practical experience who

194. Pub. L. No. 96-296.

195. Miller, *First Report Card on Trucking Deregulation*, Wall St. J., March 8, 1982, at 18, col. 4.

196. N.Y. Times, Jan. 24, 1982, at 1, col. 3. While unemployment rates in trucking subsequently increased, the General Accounting Office concluded that the severe recession of 1981-1982, not deregulation, has been primarily responsible for this development. *See* U.S. GENERAL ACCOUNTING OFFICE, EFFECTS OF REGULATORY REFORM ON UNEMPLOYMENT IN THE TRUCKING INDUSTRY 2 (1982).

197. *Motor Carrier Reform Act of 1980: Hearings Before the Senate Comm. on Commerce, Science, and Transportation*, 97th Cong., 1st Sess. 51, 54 (1981) (statement of American Trucking Associations) [hereinafter cited as *Motor Carrier Reform Act*].

198. *Id.* at 83 (statement of R.V. Durham, Director, Safety and Health Department, Brotherhood of Teamsters).

199. *Retreat from Competition: Trucking Regulation at the ICC, Report of the Joint Economic Comm.*, 97th Cong., 2nd Sess. 5 (1982).

would show caution" in applying the statute.[200] Like management and labor, Mr. Taylor found deregulation distinctly distasteful: "I really don't like to use the word," he told a Congressional committee, adding that the 1980 Act, in his opinion, had been misinterpreted as a "trucking deregulation" bill.[201] Since then, he has effectively translated theory into practice. As the Joint Economic Committee recently noted, "the ICC under Chairman Taylor has abandoned the goal of a freely competitive trucking market and has moved to reverse the progress toward deregulation which has recently been made." "This policy," the Committee concluded, "contradicts the intent of Congress embodied in its passage of the 1980 Motor Carrier Act."[202]

Thus, coalescing vertical power may yet succeed in achieving "re-regulation" of the trucking industry by administrative subversion.

III. THE PRIVATE SECTOR

In the typical oligopoly, economic theory tells us, a noncompetitive industry structure militates toward noncompetitive conduct and tends to yield noncompetitive performance. Entry is at a minimum or nonexistent. A close-knit, co-fraternal group of producers can achieve a relative degree of safety by establishing concerted, tacitly collusive, and consciously parallel market strategies. Occasional mavericks may from time to time disturb the status quo of forebearing co-existence, but they eventually tend to be integrated into the system and become members of the club. Price policy, in particular, tends to be directed toward uniformity and inflexibility, except in the case of upward movement; and, while the leadership role may rotate sometimes among the oligopolists, the level of product prices is anything but market-determined. Moreover, a "civilized" relationship, animated by a live-and-let-live spirit, tends to be established between companies and organized labor under which the fruits of the oligopoly are shared through an institutionalized mechanism of price-cost-price escalation. Innovation tends to be slow and lethargic, hampered by the bureaucratic dry rot which afflicts monopoloid giantism. So long as the oligopoly can protect itself from entry, it can luxuriate in the rewards of power which consist not of exorbitant profits but the quiet life.[203]

200. Wall St. J., August 5, 1981, at 46, col. 4.

201. *Trucking Deregulation: Is It Happening? Hearing Before the Joint Economic Comm.*, 97th Cong., 1st Sess. 70 (1981).

202. *Motor Carrier Reform Act*, *supra* note 197, at 5. *See also Re-regulating at the ICC: "The Congress Made Me Do It!"* REGULATION, Nov./Dec. 1981, at 5.

203. *See, e.g.*, W. ADAMS, THE STRUCTURE OF AMERICAN INDUSTRY 73-135 (6th ed. 1982).

Foreign competition, of course, is an unwelcome challenge to the existence and exercise of oligopoly power. It disrupts the well-ordered functioning of a private domain, where the rules of the game are understood and observed by all parties. It injects uncertainty and instability into the very foundations of the oligopoly structure by undermining the recognition of mutual interdependence and the price policies concomitant therewith. Foreign competition—the nemesis of price maintenance schemes and "orderly" market arrangements—becomes an obvious target for both labor and management groups striving for survival and growth by immunizing themselves from effective competition.[204]

The following discussion of the efforts to protect the entrenched oligopolies in the U.S. automobile and steel industries illustrates the coalescence of labor-management power in the private sector of the economy.

A. Automobiles

The first formal attempt by the automobile industry to immunize itself from foreign competition—the only real competition it has encountered since World War II— dates back to the last recession. On July 11, 1975, the United Auto Workers (UAW) (with the tacit support of the industry) filed a complaint with the United States Treasury, charging that "new, on-the-highway, four-wheeled, passenger automobiles from Belgium, Canada, France, Italy, Japan, Sweden, the United Kingdom, and West Germany" were being sold in the United States at less-than-fair value in violation of Section 201(c) of the Antidumping Act of 1921,[205] thereby causing injury to the domestic auto industry.[206] Specifically, the complaint charged that the increased market share of imported automobiles—up from 15.2 percent in 1970 to 15.9 percent in 1974 to 20.3 percent in the first half of 1975—was "at the expense of domestic sales"; that, discounting the effects of the United States recession, there was still a loss of domestic sales to imports; and that the pricing of imported cars *caused* the resulting injury to the American automobile industry and its workers. The union demanded the imposition of dumping penalties and simultaneously asked Congress for quota protection against the imports of compacts and

204. *See, e.g.*, Adams and Dirlam, *"Import Quotas and Industrial Performance" contained in* WELFARE ASPECTS OF INDUSTRIAL PERFORMANCE 153-81 (Jacquemin & De Jong ed. 1977).

205. Ch. 14, 42 Stat. 11 (1921) (repealed Pub. L. No. 96-39, tit. I, § 106(a), 93 Stat. 193 (1979)).

206. New, On-the-highway, Four-wheeled, Passenger Automobiles: Notice of 30-day Inquiry and Hearing, 40 Fed. Reg. 34,027 (1975).

subcompacts from Europe and Japan.[207]

In its comments on the UAW complaint, the United States Council on Wage and Price Stability informed the International Trade Commission that the most important factors explaining the increased market share of foreign automobiles "are the pricing policies of domestic producers and the inability of domestic manufacturers to respond rapidly to changing market conditions."[208] The Council cautioned that the imposition of special dumping penalties "would likely result in an immediate increase in the price of automobiles to the American consumer. Moreover, such penalties, or even the threat of penalties, could substantially check what has been perhaps the single most effective spur to competition in this highly concentrated industry. This, in turn, could lead to less competitive prices and a reduced level of innovation."[209]

Ultimately, the Union's complaint was resolved by a bizarre consent settlement arranged by the United States Treasury Department. Under the settlement, five foreign manufacturers agreed to *raise* their prices in the United States market, and fourteen other foreign manufacturers agreed to have their prices monitored by the Treasury for the next two years. With respect to five foreign firms, the Treasury took no action at all.[210]

During the current recession, which started in 1979, the industry again demanded protection against the depredations of import competition. In parallel petitions filed with the International Trade Commission by the United Auto Workers and Ford Motor Company—formally supported by Chrysler and tacitly endorsed by General Motors—industry spokesmen correctly contended that, between the first half of 1979 and the first half of 1980, there occurred a significant decline in production, sales, capacity utilization, and employment in the domestic automobile industry as a whole.[211] They also contended that, during the same period, there occurred a significant increase in the import penetration of the United States market for passenger automobiles and light trucks.[212] Concluding that the growing volume and increased market share of imports constituted an "important" or "primary"

207. U.S. INTERNATIONAL TRADE COMMISSION, Pub. No. 739, DOMESTIC SALES REPORT (1975).

208. Comments of the Staff of the Council on Wage and Price Stability: Before the U.S. International Trade Commission 5 (Sept. 5, 1975) (In the Matter of the Importation of Passenger Automobiles from Europe, Canada and Japan (Inv. No. AA1921-INQ2)).

209. *Id.* at 4.

210. U.S. INTERNATIONAL TRADE COMMISSION, Pub. No. 1110, CERTAIN MOTOR VEHICLES AND CERTAIN CHASSIS THEREFOR A-98 to -100 (1980).

211. *Id.* at A-27 to -42.

212. *Id.* at A-47 to -51, 49-52.

cause of serious injury to the domestic auto manufacturers, they asked the Commission to impose mandatory controls on future imports, specifically from Japan.[213]

The Commission rejected the UAW-Ford petitions, finding that the industry's malaise was primarily attributable to: (1) the impact of the recession on the overall demand for cars and trucks, and (2) the failure of U.S. manufacturers to adjust their product mix to shifts in consumer demand.[214] Undeterred by this reversal, the industry— again with active labor support and the benevolent intermediation of government— persuaded the Japanese to accept a "voluntary" quota on their auto exports to the United States.[215] Under the provisions of the agreement, Japan promised, starting in April, 1981, and for two years thereafter, to reduce its exports from 1.82 million vehicles (1980) to 1.68 million annually, and to take no more than 16 percent of the *growth* (if any) in United States domestic consumption in subsequent years.[216] This was not the ideal solution that the wielders of coalescing power had wanted, but it served, at least temporarily, as an acceptable "second best."

Throughout the campaign for import restraints—before administrative tribunals, Congressional committees, and in public opinion forums—the auto companies and the United Auto Workers presented an array of uncannily parallel arguments as rationales for increased protection.

1. Symbiotic Government-Business Relationship in Exporting Countries

According to both management and labor, a symbiosis characterizes the relationship between foreign governments and their automobile industries. The Japanese government, in particular, is said to protect and nourish its auto industry; to help the industry target export markets for invasion; and to rely on auto exports to maintain domestic employment as well as to generate foreign exchange earnings with which to finance energy imports. Therefore, it is argued, the United States must protect itself and its basic industries from the adverse consequences of this mercantilist policy.

Petitioning the United States International Trade Commission

213. *Id.* at 161-65, 176-77. *See* Pearson & Takacs, *Should the U.S. Restrict Auto Imports?* 24 CHALLENGE 47-49 (1981).

214. *See supra* note 210, at 1, 134-42.

215. BUS. WK., Oct. 20, 1980, at 43, col. 1; Wall St. J., Oct. 28, 1980, at 3, col. 1; Wall St. J., Nov. 11, 1980, at 3, col. 4. *See also*, N.Y. Times, Dec. 8, 1982, at 47, col. 1.

216. *Issues Relating to the Domestic Auto Industry: Hearing Before the Subcomm. on International Trade of the Senate Comm. on Finance*, 97th Cong., 1st Sess. 9-10 (1982) (prepared statement of David MacDonald, Deputy U.S. Trade Representative).

for import protection in August of 1980, Ford Motor Company argued:

> For decades while industry in Japan was developing, the Japanese government was supporting its domestic producers by forbidding significant competition from foreign manufacturers and by providing access to credit on favorable terms and providing important tax and export subsidies. The objective of these deliberate policies of the Government of Japan was to develop a large, modern, world-class industry. In large part, the Japanese auto manufacturers' ability to compete so well in export markets today can be traced to this historical pattern of government protection and incentives.[217]

"[T]his past pattern of strong support by the Japanese Government," Ford insisted, "makes intervention by the U.S. Government to redress the balance appropriate today."[218] It makes it incumbent on us, as Ford told the Senate International Trade Subcommittee, to "recognize the realities of world trade where nations use their auto industries to promote national goals such as generating employment, industrial development and foreign exchange earnings."[219]

The United Auto Workers echoed these sentiments. In its prepared statement filed with the House Subcommittee on Trade in March, 1980, the UAW argued:

> The Japanese government decided in the 1950s to cultivate a powerful auto industry. As it carried out effective industrial planning, the government carefully nurtured the auto industry. Its program included effective barriers against imports, favorable tax laws and outright subsidies, consolidation of the industry into a few assemblers cooperating with affiliated parts companies, and assistance in obtaining foreign technology without direct investment control by foreigners. With such hothouse treatment, the Japanese industry mushroomed from production of 715,400 vehicles in 1960 to 5.3 million vehicles in 1970, 10.0 million in 1979 and 11.0 million vehicles predicted for 1980.[220]

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217. *Ford Motor Co., Petition For Relief From Increased Imports of Passenger Cars, Light Trucks, Vans, and Utility Vehicles Under Section 201 of the Trade Act of 1974, U.S. International Trade Commission* 37 (1980) [hereinafter cited as *Ford ITC Petition*].

218. *Id.*

219. *Issues Relating to the Domestic Auto Industry: Hearings Before the Subcomm. on International Trade of the Senate Comm. on Finance*, 97th Cong., 1st Sess., pt. 1, 133 (1981) (statement of Will Scott, Vice President, Government Relations, Ford Motor Co.) [hereinafter cited as *Danforth Hearings*]. *See also United States-Japan Economic Relations: Hearings and Markup on H. Con. Res. 363 Before the Subcomms. on Asian and Pacific Affairs, and on International Economic Policy and Trade, of the House Comm. on Foreign Affairs*, 96th Cong., 2d Sess. 3-5 (1981) (statement of Will Scott, Vice President, Government Relations, Ford Motor Co.) [hereinafter cited as *Wolff Hearings*]; *id.* at 11 (statement of Wendell Larsen, Vice President, Chrysler Corp.).

220. *World Auto Trade: Current Trends and Structural Problems: Hearings Before the Subcomm. on Trade of the House Comm. on Ways and Means*, 96th Cong., 2d Sess. 72 (1980) (statement of Douglas A. Fraser, President, UAW) [hereinafter cited as *Vanik Hearings* (Mar. 1980)]. *See also U.S. Trade Investment*

The UAW told Congress that "one of the ways we are getting . . . outcompeted is that in other countries of the world, government is giving more assistance to industry than we are"; that "the U.S. auto industry must now be included in the list of industries 'incisively targeted' by Japan"; that "we cannot stand idly by while the successful industrial planning and the highly coordinated export strategy of another country—combined with the lack of planning in the U.S.—has the effect of unfairly disrupting our industries and workers and their communities"; that "[b]y refusing to devise and implement planning for ourselves we are subjected to the influences of other countries' plans"; and, finally, that "refusal to take a firmer hold of our economic destiny is becoming tragically anachronistic."[221]

2. Diversion of World Exports to the Unprotected U.S. Market

Management and labor further justified their demands for restriction of Japanese competition on the grounds that rampant protectionism in the world's major markets diverted Japanese exports to an unprotected United States market and thus focused the full brunt of Japanese expansionism on American companies and their workers. Import restriction, they agreed, was a necessary offset and belated defense to an ostensibly ubiquitous protectionism abroad.

In its petition for protection before the International Trade Commission, Ford Motor Company contended that "the size of the U.S. market, the unusually low U.S. auto tariffs, and high import barriers in Europe and elsewhere made it clear that the United States would be the primary target for a surge of Japanese exports."[222] The following month, this argument was repeated before the House Committee on Foreign Affairs:

> It's likely that the United States will remain the primary target of exports because: First, most of the major countries in the rest of the world have already acted to restrict Japanese imports in some way or another; second, the United States is the largest market in the world, and even small percentage increases translate into large numbers of vehicles; and third, the U.S. tariff structure for cars is among the world's lowest and

Policy: Imports and the Future of the American Automobile Industry: Hearing Before the Congressional Joint Economic Comm., 96th Cong., 2d Sess. 4-5 (1980) (statement of Douglas A. Fraser) [hereinafter cited as *Bentsen Hearings*].

221. *Bentsen Hearings*, *supra* note 220, at 11, 17 (statement of Douglas A. Fraser, President, UAW). *See also Danforth Hearings*, *supra* note 219, at 83 (statement of Douglas A. Fraser); *id.* at 59 (statement of Stephen I. Schlossberg, Director of Government and Public Affairs, UAW); *id.* pt. 3, at 108-09 (statement of Sheldon Friedman, Research Director, UAW).

222. *Ford ITC Petition*, *supra* note 217, at iii.

without any formal or informal local content or other rules that generally restrain imports in other parts of the world.[223]

A Ford spokesman, commenting on the necessity of U.S. import restrictions on Japanese products, exclaimed: "Everyone else has done it."[224] "The other countries of the world have already set up barriers against more Japanese products," Chrysler added; "[t]here is no place those products can go but in here."[225] Both firms decried the "open trading conditions in the U.S. auto market which act as a magnet for Japanese exports because every other important world market imposes substantial tariff and nontariff barriers to imports of Japanese autos."[226]

Here, too, the Union was in complete agreement with management. Appearing before the House Subcommittee on Trade, UAW president Fraser charged that "[p]ractically every country exercises import restraint on autos in one form or another— through high tariffs, outright quotas, orderly marketing arrangements, 'gentlemen's agreements,' and various forms of non-tariff barriers."[227] "As the biggest, most open market in the world," he insisted, "the U.S. auto market has been targeted by the Japanese for the lion's share of its exports."[228] "In contrast to U.S policy," explained Mr. Fraser, "when Japanese autos have threatened to take a significant segment of the market in various European countries, they have been frozen at levels by gentlemen's agreements."[229] According to the Union, "[o]ther countries have dealt with similar trade problems in a more spohisticated [sic] manner," while the United States receives "the leftovers from other countries' plans."[230] "Given the auto policies of the rest of the world and the present disarray of the industry in North America," the Union reasoned,

223. *Wolff Hearings*, *supra* note 219, at 5 (statement of Will Scott, Vice President, Government Relations, Ford Motor Co.). *See also Vanik Hearings* (Mar. 1980), *supra* note 220, at 100 (statement of Fred G. Secrest, Executive Vice President, Ford Motor Co.).

224. *Wolff Hearings*, *supra* note 219, at 27 (statement of Will Scott, Vice President, Government Relations, Ford Motor Co.).

225. *Id.* at 34 (statement of Wendell Larsen, Vice President, Chrysler Corp.).

226. *Auto Situation, Autumn 1980: Hearing Before the Subcomm. on Trade of the House Comm. on Ways and Means*, 96th Cong., 2d Sess. 60 (1980) (statement of Ford Motor Co.) [hereinafter cited as *Vanik Hearings* (Nov. 1980)]. "[I]t might be helpful," Ford suggested, "to look at other countries. In the European Community, for example, governments seem determined to limit Japanese cars to an overall share of 10%. We see no reason why Japan's share of our car market should be more than Europe's 10%." *Danforth Hearings*, *supra* note 219, pt. 2, at 173 (statement of D.N. McCammon, Vice President, Ford Motor Co.).

227. *Vanik Hearings* (Mar. 1980), *supra* note 220, at 72.

228. *Id.* at 73.

229. *Id.*

230. *Id.*

"immediate measures to redress the balance are required,"[231] warning that "[t]he U.S. can no longer afford to be the lone sitting duck in this situation."[232]

3. *Need for Breathing Space to Make Adjustments*

A third argument jointly pressed by management and organized labor in calling for protection from import competition was that the industry vitally needed breathing space to adjust to the sharp, unforeseen—and, they argued, unforeseeable—revolution in the preferences of American car buyers. Only protection from imports could provide the increased production volume and cash flow which, they claimed, were essential if the industry were to convert its products and production facilities to meet this revolution in market demand. Moreover, they fully agreed that only quantitative restrictions could break the buyer loyalty that threatened to bind American car buyers to Japanese auto producers.

In its petition to the United States International Trade Commission, Ford elaborated on the contention that market demand had radically shifted:

> In cooperating fully with the Government's goal of achieving a doubling of miles-per-gallon in the U.S. new car fleet between 1975 and 1985 to reduce dependence on imported oil, the automobile industry was already committed to an extremely ambitious conversion to more fuel efficient cars and trucks.
>
> This conversion program was targeted at achieving substantial across-the-board improvements in fuel economy for all sizes of U.S. cars . . . . This approach became insufficient, however, when the unforeseen events last year in Iran, the gasoline shortages and resulting lines at gas stations resulting from the Government's fuel allocation system, and the sudden reversal in U.S. energy policy (decontrolling domestic oil prices) produced a wholly unexpected shift and acceleration in U.S. consumer demand for smaller cars.[233]

Hence, "[t]he U.S. industry was not—could not have been—prepared for this quick switch."[234]

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231. *Id.*

232. *Danforth Hearings*, *supra* note 219, pt. 2, at 147-48 (statement of Douglas A. Fraser, President, UAW). *See also Bentsen Hearings*, *supra* note 220, 2-10 (statement of Douglas A. Fraser); *United Auto Workers, Petition For Relief Under Section 201 of the Trade Act of 1974 From Import Competition From Imported Passenger Cars, Light Trucks, Vans, and Utility Vehicles, U.S. International Trade Commission* 178 (1980) [hereinafter cited as *UAW ITC Petition*]; *Danforth Hearings*, *supra* note 219, at 58-68 (statement of Stephen I. Schlossberg, Director of Government and Public Affairs, UAW); *Vanik Hearings* (Nov. 1980), *supra* note 226, at 50 (statement of Douglas A. Fraser).

233. *Ford ITC Petition*, *supra* note 217, at 3.

234. *Id.*

"In these last 2 years," a Ford spokesman reasserted before the House Foreign Affairs Committee in September of 1980,

> the Japanese have taken a windfall advantage of the extremely abrupt U.S. market shift that occurred when gasoline prices—held at artificially low levels for years—suddenly doubled. Although U.S. producers were well along the way to doubling the fuel efficiency of their fleets, we were not yet equipped to meet the sudden change in U.S. consumer buying habits.[235]

The industry confronted "a situation where an abrupt change in the market has occurred with the suddenness that makes it impossible for a long lead industry to convert so quickly."[236] Or, as Chryler's Mr. Iacocca put it, "imports are having a field day because our market changed faster than anyone could anticipate."[237]

Union spokesmen concurred with management's contention that the U.S. market had suffered sharp shifts in consumer preferences.[238] Thus, one UAW representative testified:

> [C]learly the market took a very sharp turn. The auto companies were not adequately prepared for that sharp a turn. This is an industry that doesn't turn around very rapidly. It takes a fair amount of leadtime to get everything into place. I believe that while the auto companies are selling better cars now, or cars better adapted to the needs of the market than they were before, they are not there fully yet. They don't have the models fully developed that everyone wants. They don't have the ones that everyone wants in full supply. We are simply working toward that solution.[239]

"[T]he legally mandated [fuel efficiency] transition has not kept up with the massive, abrupt shift in consumer demand," Mr. Fraser argued before the Joint Economic Committee in early 1980, "and imports, largely from Japan, took a record 22 percent share of the U.S. car market last year."[240] "What happened when the gas crunch came in 1979," another union member asserted, "was that the consumer panicked and record numbers of foreign cars, sup-

235. *Wolff Hearings*, *supra* note 219, at 4.

236. *Id.* at 12-13 (statement of Will Scott, Vice President, Government Relations, Ford Motor Co.). *See also Vanik Hearings* (Mar. 1980), *supra* note 220, at 107 (testimony of Fred G. Secrest, Executive Vice President, Ford Motor Co.).

237. *Bentsen Hearings*, *supra* note 220, at 144.

238. Yet, Union representatives were unwilling to completely absolve management of all responsibility. For example, Mr. Fraser disclosed that "[o]ur industry has been horribly negligent in not producing small cars before [foreign producers] did. Our union advocated that the industry build small cars as early as 1974 and they procrastinated and procrastinated and now we find ourselves in this dilemma." *Vanik Hearings* (Mar. 1980), *supra* note 220, at 66. Senator Javits put the following question to Mr. Fraser: "[I]s it a fact that this situation has been brought on by a great management failure on the part of the American automobile industry?" "That is true," Mr. Fraser answered. *Bentsen Hearings*, *supra* note 220, at 23.

239. *Danforth Hearings*, *supra* note 219, pt. 2, at 133 (testimony of Howard Young, Special Consultant to the President, UAW).

240. *Bentsen Hearings*, *supra* note 220, at 9.

posedly fuel efficient, were sold . . . ."[241]

Management and labor wholeheartedly agreed that, because of such shifts, import reduction and restriction were essential to provide the "breathing space," the production volumes, and the cash flow which the industry needed to retool, reconvert, and recover. "Unless restrained," Ford argued in its petition to the International Trade Commission, "further growth of import penetration will adversely affect the ability of the domestic producers to finance their conversion to the new types of cars needed for the future."[242] A Chrysler spokesman dispatched to the House Foreign Affairs Committee testified: "We need a year or two to get our feet on the ground," and import restraints would provide the industry with "breathing space in which to accomplish the very costly and time-consuming transition to an entirely new generation of automobiles that are responsive to consumer demand."[243] Ford's representative, Mr. Scott, declared before the House Subcommittee on Trade that "[a]ction by the Congress and the Administration to effect such temporary restraint will get the auto industry back on its feet, and get the auto workers back on the job."[244] "U.S. producers," he added, "need the increased volume that import restraint will bring to complete the job of converting products and facilities to produce more fuel-efficient fleets."[245]

Organized labor spokesmen fully supported management on this score, too. UAW president Fraser testified before the House Subcommittee on Trade that restricting Japanese imports would "give us a breathing space that we need to convert our industry."[246] Appearing before the Joint Economic Committee, Mr. Fraser again called for restraints on Japanese imports "to give the American automobile industry the time to convert and compete."[247] In testimony before the Senate Subcommittee on International Trade, the Union once more urged that "Japanese export restraint is needed in the short term to provide the American industry with the breathing space it needs in order to retool and recover from the ills that have afflicted it in the last couple of years,"

241. *Wolff Hearings*, *supra* note 219, at 294 (statement of Frank LoCascio, Secretary-Treasurer, Local 259, UAW).
242. *Ford ITC Petition*, *supra* note 217, at 4.
243. *Wolff Hearings*, *supra* note 219, at 12-14 (testimony of Wendell Larsen, Vice President, Chrysler Corp.).
244. *Vanik Hearings* (Nov. 1980), *supra* note 226, at 60.
245. *Id.* at 62. *See also Danforth Hearings*, *supra* note 219, at 134 (statement of Will Scott, Vice President, Government Affairs, Ford Motor Co.); *id.* at 136 (statement of Pierre H. Gagnier, Financial Liaison Executive, Chrysler Corp.).
246. *Vanik Hearings* (Mar. 1980), *supra* note 220, at 66.
247. *Bentsen Hearings*, *supra* note 220, at 4. *See also UAW ITC Petition*, *supra* note 232, at 275.

and warned that "[c]ontinued unbridled expansion of the import share threatens . . . [a] remarkable five-year transition program."[248] And, returning before the Subcommittee two months later, the UAW praised Senate Bill 396—entitled "A Bill To Impose Quotas on the Importation of Automobiles From Japan"—as legislation that "goes a long way toward providing [breathing space for the industry]."[249]

Management and labor also joined in arguing that quantitative barriers to foreign competition were crucial to break the bonds of buyer loyalty that both groups warned were arising between American consumers and Japanese producers. "[A] consumer who purchases a Japanese car now," Ford Motor Company claimed in its petition to the International Trade Commission, "is more likely to purchase another imported car in the future then [sic] he is to buy any U.S. produced car."[250] The result, Ford contended, was menacing: "sales lost by a domestic producer to imports today carry with them the assurance that more sales will be lost in the future."[251] "The momentum of Japanese imports must be stopped," Ford demanded before the House Subcommittee on Trade, "or we will face a major, if not insurmountable, problem in recapturing lost consumers . . . ."[252] Restricting imports, Chrysler argued before the House Foreign Affairs Committee in 1980, and again in 1981, before the Senate Subcommittee on International Trade, was essential "to maintain necessary standards of customer loyalty to U.S. products,"[253] and thereby prevent "serious permanent erosion in . . . customer loyalties."[254]

The Union echoed management's position on this point. Mr. Fraser told Senator Bentsen during the Joint Economic Committee's hearings:

248. *Danforth Hearings*, *supra* note 219, pt. 1, at 84 (statement of Douglas A. Fraser, President, UAW).
249. *Id.* pt. 2, at 143 (statement of Douglas A. Fraser, President, UAW).
250. *Ford ITC Petition*, *supra* note 217, at 38-39.
251. *Id.*
252. *Vanik Hearings* (Nov. 1980), *supra* note 226, at 62 (statement of Ford Motor Co.).
253. *Wolff Hearings*, *supra* note 219, at 12 (statement of Wendell Larsen, Vice President, Chrysler Corp.).
254. *Danforth Hearings*, *supra* note 219, at 138 (statement of Pierre H. Gagnier, Vice President, Chrysler Corp.). Ford's Mr. McCammon insisted that American car buyers were less than rational:

> Well, part of the problem right now, as I indicated, was a matter of perception among the public exactly what the situation is. In fact, some people are willing now to spend $900 more for an Accord, for example, than a Fairmont in order to save a nickel a day of gas . . . . It isn't always a rational decision that is going on out in the world of car buying.

Id. pt. 2, at 211.

> I might say in this connection, Senator, that one of the things that concerns me is that without that restraint, and if the imports keep increasing during the span of time when the American automobile industry is getting their house in order . . . there's likely to be a longer term problem due to a thing in the auto industry known as consumer loyalty. It is a very, very logical process. If you buy a product and you are satisfied with that product, why risk the chance of changing? And you are apt to go back.
>
> And I think if we just stand idly by and let this matter develop naturally and normally, I don't know how we can ever turn it back.[255]

Testifying before the House Committee on Foreign Affairs, the Autoworkers warned that such consumer loyalty and repeat buying behavior portended more ominous, long-run effects:

> The continuing surge of imports into the U.S. threatens to have a lasting detrimental effect. In the auto industry, a company's market share tends to be somewhat self-perpetuating because of the prevalence of repeat buying. Moreover, as a company boosts its current sales, its network of dealerships expands and future car buyers become more familiar with its products. This lays the basis for higher sales in the not too distant future.[256]

Like management, the UAW repeatedly emphasized that brand loyalty—as opposed to price—was an important key to Japan's success in the American car market.[257]

4. Cost of Protection Less Than the Cost of Inaction

Finally, management and labor agreed that the costs of import protection were negligible and were far outweighed by the costs which would result from a failure to protect the industry. The argument was two-fold. First, there was no risk of triggering retaliatory trade reaction because quantitative restrictions imposed by the United States would merely reduce Japanese *overtime* production. Second, increased production and employment in the U.S. auto industry would generate increased government tax revenues while, at the same time, reducing public unemployment and associated welfare expenditures.

Curtailing Japanese exports to the United States by one million units per year, Chrysler alleged, "will not threaten the jobs of Japanese workers. . . . The Japanese workers who have been working on overtime would not be laid off. There would be no need for any kind of retribution in trade."[258] Mr. Iacocca's proposed National Automotive Recovery Act—calling, *inter alia*, for import re-

255. *Bentsen Hearings*, *supra* note 220, at 6.
256. *Wolff Hearings*, *supra* note 219, at 57 (statement of UAW).
257. *See Danforth Hearings*, *supra* note 219, pt. 3, at 127 (testimony of Sheldon Friedman, Director of Research, UAW); *Vanik Hearings* (Nov. 1980), *supra* note 226, at 57 (testimony of Douglas A. Fraser, President, UAW).
258. *Wolff Hearings*, *supra* note 219, at 12, 16 (statement of Wendell Larsen, Vice President, Chrysler Corp.).

ductions—"would not cause the layoff of a single Japanese worker, and it would not cause a trade war with Japan."[259]

The UAW endorsed management's position. It told the Senate Subcommittee on International Trade:

> Some have expressed the fear that actions to restrict imports from Japan would lead to retaliation. We don't think so. Restraint would not significantly increase the Japanese unemployment rate, . . . a reduction in exports to the U.S. might simply lead to reduced use of overtime work, now running 12-14 hours per week in Japan.[260]

In sum, the effects of import restrictions on Japanese production and employment would be only marginally significant.[261]

On the other hand, the benefits of import restrictions for the United States would far outweigh the costs. A Ford spokesman assured the Senate Subcommittee on International Trade:

> This temporary restraint will not be inflationary. Even assuming as much as 15% higher prices for Japanese cars, the effect would be more than offset by savings in unemployment costs and by the added tax revenues which will follow automatically as gains in U.S. car sales put our plants and people back to work. American taxpayers already are bearing the $3 billion cost of auto-related unemployment and tax revenues lost to federal, state, and local governments. This really amounts to a subsidy to support extraordinary levels of car imports from Japan—hardly in keeping with the spirit of scrutinizing every dollar of taxpayer expense with great care.[262]

The UAW made precisely the same point. Mr. Fraser testified:

> Some have argued that it is costly to limit imports and to prop up the domestic industry. We argue that—with the high-mileage domestic small cars now available—the cost is not nearly as high as that of *not* saving the auto sector.
>
> Consider the costs of inaction. First, there are staggering losses in corporate tax revenues at all levels of governments. For example, in 1978, the Big Three paid some $2.5 billion in federal income taxes alone. The Big

259. *Danforth Hearings*, *supra* note 219, at 136.

260. *Id.* at 85 (statement of Douglas A. Fraser, President, UAW).

261. *See Bentsen Hearings*, *supra* note 220, at 13 (statement of Douglas A. Fraser); *Vanik Hearings* (Mar. 1980), *supra* note 220, at 75 (statement of Douglas A. Fraser, President, UAW); *Wolff Hearings*, *supra* note 219, at 57 (statement of UAW).

262. *Danforth Hearings*, *supra* note 219, pt. 2, at 173-74 (statement of D.N. McCammon, Vice President, Ford Motor Co.). The companies further embellished this argument by warning that accession to what—in the industry's estimation—were "modest" claims would deflect calls for more extreme protectionist measures (from unidentified sources) which *would* touch off retaliatory trade wars. General Motors, for example, boldly declared its support for "immediate and substantial reduction in passenger car exports to the United States for a meaningful period of time" as a means of *stemming* "protectionist pressures, both here and abroad, which could result in lasting harm to important world trading relationships." *Id.* at 243-44 (statement of General Motors).

> Three's 1980 losses will make them eligible for some $3 billion in credits and refunds — a swing of over $5 billion in federal tax receipts.
>
> Second, the difference between a healthy and a sick auto industry in government-financed unemployment insurance, welfare, TRA, food stamps, and foregone personal income tax receipts comes to about $6 billion.
>
> Compared to these public sector losses of some $11 billion for a year such as 1980, not to mention the immeasurable cost in human suffering, the cost of our proposals to temporarily limit imported cars . . . is small.[263]

In short, according to both management and labor, protecting the auto industry from foreign competition was less costly to the nation than a policy of inaction and nonintervention.

5. Summary: Automobiles

In the foregoing study of the automobile industry, vertical power was found to coalesce around a demand for protection from foreign competition for a lethargic and unresponsive domestic automobile oligopoly. As was the case in the airline and trucking industries' fight against deregulation, auto companies and the UAW presented a remarkably unified front on a number of issues, on a number of occasions, and in a number of forums.

The exercise of coalescing power initially appeared to be only partially successful. While, as indicated, Japanese producers agreed in 1981 to restrict their exports to the U.S., this restraint was to be strictly limited to provide a breathing space of two years' duration. However, whether or not the restraint will indeed be "temporary" is open to question; as the expiration date of spring 1983 approached, the industry successfully urged that current import restraints be extended in time and tightened in impact.[264]

Domestic content legislation currently before the Congress at the UAW's behest poses what may be the greatest challenge to the post-war, "civilized" relationship between management and organized labor in this industry.[265] If enacted, this legislation would institute domestic content requirements—calculated as U.S. value added as a percentage of wholesale price—applicable to all auto manufacturers, foreign and domestic, producing more than 100,000 units for sale in the United States.[266] Steeply graduated by sales volume, these requirements would reach as high as 90 percent for

263. *Danforth Hearings*, *supra* note 219, at 88-89.

264. Wall St. J., Oct. 18, 1982, at 2, col. 1.

265. Domestic content requirements designate the percentage of American-made parts which must be contained in vehicles sold in the United States. *Domestic Content Legislation and the U.S. Automobile Industry: Analyses of H.R. 5133 Before the Subcomm. on Trade of the House Comm. on Ways and Means*, 97th Cong., 2nd Sess. 1-2 (1982) (Congressional Budget Office study).

266. *Id.* at 7-8.

manufacturers with sales exceeding 500,000 units.[267] Their practical effect, according to the Congressional Budget Office, "would be the imposition of a rigid import quota of 100,000 units per year on each foreign auto producer"—a 65 percent reduction from current import levels.[268] The potential divisiveness of this proposed legislation—urgently classified as a "top legislative priority" by both the UAW and the AFL-CIO—stems, of course, from the restrictive impact which it would work upon the expanding internationalization of American auto companies and their increased reliance on offshore sourcing for components.[269] Not surprisingly, therefore, the "Big Three" have so far refrained from either endorsing or opposing local content legislation, doubtless in an effort to avoid, by resort to diplomatic vagueness, a crucial test of the durability of the "civilized relationship" between management and labor.

B. Steel

In steel, the drive for protection antedates the campaign in automobiles. Faced with what the industry viewed as a mounting import tide in the early 1960's, and after filing unsuccessful "countervailing duty" and "antidumping" complaints with the United States Tariff Commission, it shifted its protectionist efforts to the legislative and public relations front. This strategy, supported from 1967 onward by the United Steelworkers, eventually paid off with the signing of the Voluntary Restraint Agreement (VRA) that went into effect on January 1, 1969.[270]

Under the Voluntary Restraint Agreement, annual steel im-

267. *Id.*

268. *Id.* at 9, 62.

269. Wall St. J., Sept. 3, 1982, at 6, col. 4. Despite the potential divisiveness of such domestic content requirements, the coalescing, tacitly collusive relationship between companies and the Union has to date bred a remarkable degree of solicitude. Thus, rather than outrightly declaring their opposition to such proposals, management has followed a more diplomatic tack, characterizing such legislation as constituting a distinctly "second-best" option. "The proposed legislation should be viewed as an instrument of last resort," Ford Motor Company suggested, "to be considered when other measures to correct trade inequities and imbalances have been tried and have failed . . . ." *Fair Practices in Automotive Products Act: Hearings on H.R. 5133 Before the Subcomm. on Trade of the House Comm. on Ways and Means*, 97th Cong., 2d Sess. 306 (1982) (statement of Philip Caldwell, Chairman of the Board, Ford Motor Co.). As an example of what a "more effective" policy might comprise, Mr. Caldwell intimated that "voluntary" import restraints might be extended into "the mid-1980s." *Id.* at 341. While likewise sympathetic to the objectives of domestic content requirements, the Chairman of the Board of General Motors, Roger B. Smith, did not believe that such legislation was "the best way to achieve the objectives we all seek." *Id.* at 432.

270. Adams, *Import Restraints and Industrial Performance*, MICH. Y.B. INT'L LEGAL STUD. 38 (1979).

ports from Japan and the European Community were limited to 5.8 million tons each, compared to their then current levels of 7.5 million and 7.3 million tons, respectively. The Agreement also provided for an annual growth of 5 percent in the allowable quotas.[271] It was described approvingly by the Chairman of the Ways and Means Committee of the United States House of Representatives as a "welcome and realistic step."[272]

Within three years, however the domestic industry found the VRA unsatisfactory; quotas had not been established, either for specific products or for individual exporting countries (other than Japan). Moreover, both the Japanese and Europeans claimed that fabricated structural steel and cold finished bars were not included in the VRA quotas, since the quotas were expressed in terms of tonnage. Therefore, they rapidly expanded their shipments of stainless steel and other high-value products to the United States market—despite their promise to "try to maintain approximately the same product mix and pattern of distribution" as before the accord was signed.[273] The effect of this upgrading in imports, combined with the inevitable increase in the price of imported steel, was that the total value of steel imports was as high in 1970 as in 1968, notwithstanding a 25 percent decline in the volume of imports during the same period.[274]

As a result, the three-year extension of the Agreement—announced by the White House on May 6, 1972—contained specific tonnage limitations on three categories of specialty steels (stainless, tool, and other alloys) and set the quotas at less than their 1971 import level. In addition, fabricated structural steel and cold-finished bars were specifically included in the Agreement. Also, the participants agreed to maintain their product mix and their customary geographic distribution pattern. Finally, a 2.5 percent (instead of the former 5 percent) annual increase in the allowable imports was to be applied to the global tonnage allocated to Japan and the European Economic Community (EEC).[275]

Unfortunately (for the protectionists), the connivance between the domestic industry, the State Department, and foreign steel producers to limit imports triggered an antitrust suit by Consumers Union which charged that the VRA constituted a *prima facie* conspiracy under the Sherman Antitrust Act.[276] While the Court

271. *Id.* at 38-39.
272. *Id.* at 39.
273. *Id.*
274. L. WEISS, CASE STUDIES IN AMERICAN INDUSTRY (2d ed. 1971).
275. Adams, *supra* note 270, at 39.
276. Consumers Union of United States, Inc. v. Rogers, 352 F. Supp. 1319 (D.D.C. 1973), *aff'd sub nom.* Consumers Union of United States, Inc. v. Kissinger, 506 F.2d 136 (D.C. Cir. 1974), *cert. denied*, 421 U.S. 1004 (1975).

eventually ruled only on the State Department's authority to insulate the agreement from the antitrust laws, it left little doubt that the foreign signatories to the pact could be held accountable for participation in any trade restraints.[277] In any event, the decision was clear enough to persuade all concerned that the VRA should not be renewed when it expired in May, 1975.

After the passage of the Trade Act of 1974 which loosened the standards of proof in antidumping actions,[278] renewed pressure for import restraints was crowned with success —at first, in the industry's stainless and specialty steel sector. Following lengthy proceedings, the International Trade Commission ruled, in 1976, that the domestic firms were indeed injured by rising imports, and recommended to the President the imposition of quotas on four categories of specialty steel products.[279]

Stating that quotas are an inflexible and relatively undesirable remedy for the supposed injury, the President gave Japan, the EEC, and Sweden ninety days to enter, voluntarily, into "orderly marketing agreements" with the United States negotiators before approving the Commission's recommendations.[280] Under the threat, the Japanese gave in, signing a VRA on the final day of the ultimatum. Quotas were imposed, as threatened, with the Japanese benefiting and the EEC losing, as compared to the original Commission recommendations.[281]

This arrangement for stainless and specialty steel producers was soon followed in January, 1978, by a comprehensive protection plan for the industry's much larger carbon steel sector. The mainstay of the plan was the Trigger Price Mechanism (TPM)[282] which established a thinly veiled price floor for nearly all imported steel, and was calculated quarterly on the basis of Japanese production costs, plus all exporting costs from Japan, plus an arbitrary percentage mark-up for "profits." Its avowed objective was to raise steel prices in the U.S. market in order to give domestic producers a "breathing spell" from import competition.[283]

Here, as with the automobile industry, the protectionist cam-

277. *Id.*
278. *See* ADAMS & DIRLAM, *Import Competition and the Trade Act of 1974: A Case Study of Section 201 and Its Interpretation by the International Trade Commission*, 52 IND. L.J. 535 (1977).
279. STAINLESS STEEL AND ALLOY TOOL STEEL, TA201-3, U.S.I.T.C. PUB. NO. 756 (1976).
280. *See* 41 Fed. Reg. 11,269 (1976).
281. *Id.* at 24,101 (to be codified at 3 C.F.R. § 4445).
282. 42 Fed. Reg. 65,214 (1977) (to be codified at 19 C.F.R. § 141).
283. Findings of the Department of Treasury with Regard to the Coverage of Wire Rod, Wire and Wire Products under the Trigger Price Mechanism 30 (April 13, 1978) *reprinted in* Adams, *supra* note 270, at 41.

paign jointly waged by the steel industry and organized labor rested on lines of argument characterized by an unmistakable trace of conscious parallelism.[284]

284. The pattern in steel, however, did differ from that of other industries in at least one procedural respect. Steel evidenced explicit and outright collusion between management and organized labor; pretenses of independence, in other words, were immodestly dispensed with.

For example, while addressing the Economic Club of Detroit in 1968, the president of the American Iron and Steel Institute, Mr. John P. Roche, was asked "Is Labor supporting the steel industry's quota position in a beneficial way?" "Happily," he responded, the Union had abandoned its free trade stance to join with management:

> I think most of you know that the United Steelworkers have had a long-standing philosophical approach to the question of trade that is very close to the free trade position of the government.
>
> . . . .
>
> The Steelworkers last spring and summer could see that this was no longer just a matter for pleasant academic discussion, that there had to be some halt to imports, and happily as far as we're concerned, they joined with us last October in our support of the bills that are before the Congress asking for a quota on steel imports. We think their support is absolutely essential and it is not a perfunctory support. The union's Washington office is working very closely with the steel companies in attempting to get increasing support from the Congress.

Address by J.P. Roche, President, American Iron and Steel Institute, before the Economic Club of Detroit at 16-17 (1968) [hereinafter cited as Detroit Economic Club Address].

Such collusion was formally acknowledged by I.W. Abel, president of the Steelworkers, at a 1972 conference:

> [I]t traditionally had been the policy of the American labor movement to be great and staunch free traders. For some reason or other we prided ourselves on being able to expound that slogan. But in view of that tradition and that policy, it was the decision of your officers to join with the leaders of the Steel Industry to try to cope with this problem, and we jointly went to the leaders of Congress, and to the Administration.

Press Release by I.W. Abel, President of United Steelworkers of America, given at a News Conference at the Joint Conference on Imports and Productivity, Washington, D.C. (Dec. 1, 1972) (available at United Steelworkers of America, AFL-CIO/CLC, Int'l. Hdq.).

Thus, management and labor "jointly petitioned the office of the Special Trade Representative" in protesting an alleged bilateral agreement covering steel flows between Japan and the Common Market. *Vanik Hearings* (1977), *infra* note 295, at 313 (statement of Lloyd McBride, President, United Steelworkers). In another instance, Steelworker president McBride testified that the "industry and the union have both advocated that there be an international mechanism to monitor steel flow and to provide safeguard relief against market disruption." *Id.* at 314. In July of 1977, Mr. McBride and the president of Jones & Laughlin Steel, Thomas C. Graham, convened a joint news conference on imports. "Lloyd and I are here today to speak with you about one of the most serious problems facing the American steel industry," Mr. Graham began, "[that being] the flood of steel imports into the U.S. marketplace." *Id.* at 393.

In 1975, the tool and stainless steel industry and the Union jointly peti-

1. Symbiotic Government-Business Relationship in Exporting Countries

Like their counterparts in the auto industry, spokesmen for steel companies and steel workers justified their demand for protection from import competition by pointing to what they alleged was the symbiotic relationship between virtually all foreign governments and their respective steel industries. With the exception of the United States Government, both power blocs contended that foreign nations relied on their steel industries as instruments of national policy in pursuing such objectives as maintaining full employment, increasing foreign exchange earnings, and shoring up their balance of payments. Because foreign steel producers were immune from profit and loss considerations, management and organized labor insisted that protection of the United States steel industry was both essential and equitable.

In hearings before the Senate Finance Committee in 1966, Mr. John P. Roche, president of the American Iron and Steel Institute (AISI), charged the world's principal steel-producing nations with "using the great United States market as a means to further their own social, political, and economic aspirations at our expense" through the export of large tonnages to the United States "at whatever price is necessary to get an order."[285] "The foreign steel

tioned the International Trade Commission to restrain foreign competition in specialty steels. *See* Statement of Allegheny Ludlum before the International Trade Commission (1977). Appearing before the House subcommittee in 1978, the Union's Mr. Sheehan declared that "President McBride of the Steelworkers, and Mr. Speer, of the American Iron and Steel Institute, are jointly seeking from the Committee legislative support for an international steel sector arrangement." *Vanik Hearings* (1978), *infra* note 290, at 107. "We have recently submitted to the Department of Labor's Steel Sector Advisory Committee the joint union-industry proposal that there be no reduction of steel tariffs unless an international safeguard mechanism be developed," Mr. Sheehan explained. *Id.*

A statement jointly issued by the Union and the American Iron and Steel Institute in 1978 cited "the serious nature of the worldwide steel crisis and the need for sector negotiations leading to the establishment of an international mechanism providing prompt and effective relief from market disruption," while urging that "tariff cuts be made contingent upon the achievement of a multilateral agreement leading to long-term resolution of world steel problems"—a proposal that compelled Congressman Gibbons to remark that "that translates into a world cartel on steel." *Vanik Hearings* (1978), *infra* note 290, at 113, 119. Similarly, the Labor-Management Committee for Fair Foreign Competition—comprising "24 companies and unions having offices or facilities in the Western steel market"—was established in 1970 and, in 1977, "brought to the attention of the [International Trade Commission] the critical conditions of the western steel industry" in calling for restraint of foreign competition. *Vanik Hearings* (1980), *infra* note 291, at 71-72.

285. *Steel Imports: Hearings Before the Senate Comm. on Finance*, 89th Cong., 2d Sess. 269 (1966) [hereinafter cited as *Long Hearings* (1966)].

producer," Mr. Roche asserted, "functions under an economic system in which he feels obligated to maintain the highest practicable operating level regardless of his home market conditions."[286]

The chairman of Armco Steel, Mr. C. William Verity, argued in 1973 before the House Ways and Means Committee that "production costs are not the determining factor in steel export prices of foreign producers." Mr. Verity also asserted that foreign producers frequently "price the product to get into our market in order to achieve domestic economic objectives, such as inflow of dollars, improved balance of payments, or maintenance of full employment of their steel mills."[287] Said Mr. Roger S. Ahlbrandt, spokesman for the specialty metals industry and chairman of Allegheny Ludlum:

> Politico-economic policies of Western Europe, as a whole, and Japan have been designed to achieve continuous investment; dependability of raw material supply, and a maximization of foreign currency earnings for the industry by public subsidy or ownership; trade protection and export incentives; cartelization under public guidance; maintenance of undervalued currencies; and prohibition or effective disincentives, via non-tariff barriers, to hinder significant investment or import penetration of their domestic steel markets by American producers.[288]

"Consequently," Mr. Ahlbrandt concluded, "they are better armed to 'go for the jugular' . . . as their national policies dictate . . . ."[289]

"We operate in a world market where over 70 percent of the output is produced in facilities which are government owned or controlled," the chairman of the American Iron and Steel Institute reiterated before the Senate Finance Committee in 1974. Therefore, "we must have adequate safeguards against floods of imports coming in at very low prices supported by other governments to further their own political and economic policies."[290]

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286. *Id.* at 271. *See also Import Quotas Legislation: Hearings Before the Senate Comm. on Finance*, 90th Cong., 2d Sess., pt. 2, 839 (1967) [hereinafter cited as *Long Hearings* (1967)]; American Iron and Steel Institute, Background Memorandum on American Iron and Steel Institute Steel Import Policy, 5, 7 (1967) [hereinafter cited as *AISI Background Memo*].

287. *Trade Reform: Hearings Before the House Comm. on Ways and Means*, 93d Cong., 1st Sess., pt. 12, 3965 (1973) [hereinafter cited as *Mills Hearings* (1973)].

288. *Id.* at 3974.

289. *Id.*

290. *Trade Reform Act of 1973: Hearings on H.R. 10710 Before the Senate Comm. on Finance*, 93d Cong., 2d Sess., pt. 4, 1081-82 (1974) [hereinafter cited as *Long Hearings* (1974)]. *See also Administration's Comprehensive Program For the Steel Industry: Hearings Before the Subcomm. on Trade of the House Comm. on Ways and Means*, 95th Cong., 2d Sess. 78 (1978) (statement of Edgar B. Speer, Chairman, American Iron and Steel Institute); *id.* at 172 (statement of William H. Knoell, President, Cyclops Corp.); *id.* at 177 (testimony of Roger Regelbrugge, President, Korf Industries) [hereinafter cited as *Vanik Hearings* (1978)].

In 1979, the American Iron and Steel Institute retrod what had become a well-worn path. Testifying before the House Subcommittee on Trade, the president of the AISI, Mr. Robert Peabody, argued once more that "[i]n most foreign steel producing countries, the steel industry is an instrument of national and social policy. Steel has been exported at almost any price in order to maintain employment."[291] "The facts are clear," the president of Allegheny Ludlum, Mr. Richard P. Simmons, asserted before the House Subcommittee on Economic Development in late 1981; "[w]e are unwilling combatants in a trade war, initiated by other nations to serve their own political, social, and economic purposes." "The losers," Mr. Simmons warned, "will be all of us."[292]

Spokesmen for the United Steelworkers wholeheartedly supported management. "[M]ost of these [steel exporting] countries," the Union asserted in congressional testimony on steel imports in 1966, "have social practices which forbid or hinder lay-offs in times of reduced demands. So production schedules must be maintained. And the excess must be disposed of somehow, even at distress prices."[293] Foreign producers, Union officials insisted, "are propelled by a complusive urge to maintain production by expanding their share of the export market through drastic price sacrifices."[294]

The Union reiterated this argument in its 1977 testimony before the House Subcommittee on Trade: "Imports are not only a function of productivity, wage rates, and technological innovation. To a growing extent they are also a function of social policies in foreign producing nations which are designed to insulate the foreign producers from the trauma of economic fluctuations."[295] "Social obli-

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291. *Problems in U.S. Steel Market: Field Hearings Before the Subcomm. on Trade of the House Comm. on Ways and Means*, 96th Cong., 1st Sess. 110 (1980) [hereinafter cited as *Vanik Hearings* (1980)].

292. *Economic Health of the Steel Industry and the Relationship of Steel to Other Sectors of the Economy: Hearing Before the Subcomm. on Economic Development of the House Comm. on Public Works and Transportation*, 97th Cong., 1st Sess. 99 (1982) [hereinafter cited as *Oberstar Hearings*].

293. *Impact of Imports and Exports on American Labor: Hearings on H.R. 16,831 and H.R. 17,248 Before the General Subcomm. on Labor of the House Comm. on Education and Labor*, 89th Cong., 2d Sess. 201 (1967) (statement of United Steelworkers) [hereinafter cited as *Dent Hearings*]. The Union recognized that unilateral restriction of steel imports by the United States would invite corresponding exclusion of U.S. steel abroad. Thus, the Steelworkers called for an international, multilateral agreement on dumping. "Dumping," according to the Union's suggested definition, would occur whenever exports were priced below "going prices" in the markets receiving them—a definition which, if adopted, would effectively eliminate price competition. *Id.* at 201-02.

294. *Long Hearings* (1967), *supra* note 286, at 890 (statement of Joseph P. Molony, Vice President, United Steelworkers).

295. *World Steel Trade: Current Trends and Structural Problems: Hearing Before*

gations to workers developed by legislation . . . and economic commitments to investments by foreign governments," the Union's representative, Mr. Sheehan, argued, "fuel their drive for exports."[296] "American steelworkers and steel companies," the Union contended, "are, therefore, faced with a competing social policy in addition to market economic competition."[297] "The consequences of such an economic-social policy cannot be counterbalanced by pure competition in the American marketplace," the steelworkers concluded.[298]

Union representatives returned to this argument again in 1978. A policy statement on jobs and steel imports declared:

> We have not lost our markets to foreign producers who can sell in the American market at lower cost than American producers. Rather, we are losing our markets to steel dumped in the United States at prices far below what it costs to produce that steel in foreign mills. Foreign nations are exporting their unemployment to the United States by means of government loans, subsidies, and tax concessions which enable their steel mills to keep producing and selling to American consumers regardless of whether they make a profit, or even break even.[299]

"All too frequently," Steelworker president McBride lamented before the House Subcommittee on Economic Development in 1981, "our trading partners pursue social policies to protect employment and capital, to the detriment of our workers and businesses."[300] "Unless we conduct ourselves in such a way as to deal with the problems other countries create for us," warned Mr. McBride, "it seems to me we are not going to be able to deal with the problems successfully."[301]

2. Diversion of World Exports to the Unprotected U.S. Market

Steel companies and steel workers—like their colleagues in the automobile industry—also supported their demand for protection by pointing to allegedly ubiquitous protectionism abroad which, they charged, concentrated the full force of growing world steel exports on a large and unprotected American market. Underlying the problem of foreign steel exports to the United States, they contended, was a substantial, chronic, excess steel-making capacity

the Subcomm. on Trade of the House Comm. on Ways and Means, 95th Cong., 1st Sess. 314 (1977) (statement of Lloyd McBride, President, United Steelworkers) [hereinafter cited as *Vanik Hearings* (1977)].

296. *Id.* at 307 (statement of Jack Sheehan, Legislative Director, United Steelworkers).

297. *Id.* at 312 (statement of Lloyd McBride, President, United Steelworkers).

298. *Id.*

299. *Vanik Hearings* (1978), *supra* note 290, at 109 (testimony of John J. Sheehan, Legislative Director, United Steelworkers).

300. *Oberstar Hearings*, *supra* note 292, at 27.

301. *Id.* at 40.

abroad. They claimed that this excessive capacity was due to two foreign governmental policies: industrialized nations have sought to maintain high levels of employment in their home markets; while developing countries have sought to invest in new steel capacity. Protection of the U.S. market, company and union spokesmen reasoned, not only would be equitable, but would also deter "reckless" capacity expansion abroad.

As early as 1966, AISI president Roche warned the Senate Finance Committee that "we should expect that imports will continue to be sold in increasing volume at whatever prices they will bring in the world's largest and freest market—the United States."[302] The following year, AISI Chairman Worthington pressed the argument at a congressional breakfast sponsored by his trade association: "America is a prime target for these exports because the steel market in the United States is not only the largest and most diversified in the world—it is also the most open and easily accessible in the world."[303] As a result, he argued, "the United States market is thus being used by foreign mills as a kind of 'Bargain Basement' in which to dispose of their surplus production."[304] AISI's president, Mr. Roche, reiterated the argument in a 1968 address to the Economic Club of Detroit, insisting that the "United States has been the nation most adversely affected by the growth in free world surplus capacity" because, *inter alia*, "this country has fewer restrictions on steel imports than any other country."[305]

In 1977, the chairman of Armco Steel, Mr. Verity, warned of "a secret arrangement whereby the Japanese agreed to limit exports to Europe. The result was a drastic steel trade diversion by the Japanese from Europe to the United States."[306] The following year, Mr. Speer of the AISI, repeated charges "that a cartel arrangement between the European Community and Japan had

302. *Long Hearings* (1966), *supra* note 285, at 273.

303. Text of speech by L.B. Worthington, Chairman, American Iron and Steel Institute, at Second Annual AISI Public Affairs Conference Congressional Breakfast, Washington, at 7 (1967) [hereinafter cited as Congressional Breakfast Address].

304. *Id.* at 8. *See also Time For A New Look at Foreign Trade*, address by R. Blough, Chairman of the Board, United States Steel Corp., before joint dinner meeting of the Commerce and Industry Association of New York, and World Trade Club, at 10 (1967).

305. Detroit Economic Club Address, *supra* note 284, at 6. *See also Long Hearings* (1974), *supra* note 290, at 1081 (statement of Stewart S. Cort, Chairman, American Iron and Steel Institute); *Tariff and Trade Proposals: Hearings Before the House Comm. on Ways and Means*, 91st Cong., 2d Sess., pt. 6, 1756 (1970) (statement of George A. Stinson, Chairman, American Iron and Steel Institute) [hereinafter cited as *Mills Hearings* (1970)].

306. *Vanik Hearings* (1977), *supra* note 295, at 317.

caused a substantial amount of Japanese steel to be directed into the United States, rather than to European markets."[307] Again in 1979, the charge was trumpeted before yet another congressional committee:

> Failure to deal adequately with the Japanese- European cartel has led, as predicted, to a proliferation of similar arrangements. Today, bilateral agreements exist between Europe and 18 different nations. The central feature of these agreements is a quantitative restriction on steel exports to the European Community. This limitation applies not just to overall deliveries in Europe, but on a product-by-product and region-by-region basis, with shipments being phased over time.
>
> In addition, the signatories are committed to observe Community price lists, less a specified percentage. In the case of developing countries such as Brazil, South Africa, and South Korea, for instance, the delivered price may not be less than 6 percent below Community list prices for carbon steel products.
>
> It should come as no surprise, therefore, that these same nations have significantly increased exports to the United States.[308]

While management was delegated the primary responsibility for making this argument, organized labor lent its support when needed. "With other markets thus insulated," Steelworker president McBride contended in 1977 before the House Subcommittee on Trade, "the relatively bare U.S. marketplace acts as a lightening rod and we are forced to absorb the displaced trauma."[309] At a news conference jointly convened by the Steelworkers and Jones & Laughlin Steel in 1977, Steelworker president McBride agreed with management's charge of collusion between Japan and European producers: "[the Japanese] have agreed with the European Common Market nations to a quota system," asserted Mr. McBride; "[i]t leaves only one nation in the world for them to send their steel to and that is to the United States."[310] "While the EEC benefited," Mr. McBride once again charged in 1981 before a House subcommittee, "we in the U.S. bore the brunt of their restrictive policies."[311] Instead of protecting our national interests, the Union president admonished committee members, "[o]ur government appears to be more interested in being an island of free trade in a sea of restrictions, protectionism, and subsidies."[312]

Both management and union agreed that excess capacity was

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307. *Vanik Hearings* (1978), *supra* note 290, at 80.
308. *Vanik Hearings* (1980), *supra* note 291, at 50 (statement of L. Frederick Gieg, Jr., Vice President and General Manager, Western Steel Division, United States Steel Corp.).
309. *Vanik Hearings* (1977), *supra* note 295, at 314. *See also Mills Hearings* (1970), *supra* note 305, at 1826 (statement of John J. Sheehan, Legislative Director, United Steelworkers).
310. *Vanik Hearings* (1977), *supra* note 295, at 314.
311. *Oberstar Hearings*, *supra* note 292, at 27.
312. *Id.*

the crux of the problem. "Steel mill products are not being imported into the United States primarily because there is a great need for them here," the president of the American Iron and Steel Institute contended before the Senate Finance Committee in 1966, "but rather because foreign production is in excess of home market needs."[313] Moreover, the problem was likely to worsen owing to the policies of developing nations:

> The ever-growing excessive foreign steel capacity and production, the results of which plague the American steel industry, is augmented by the race in many less-developed countries to attain self-sufficiency in steel production. The less-developed countries have also built steel capacity at a rapid rate for the purpose of improving their own balance of payments situation and also as a status symbol irrespective of domestic demand.[314]

The "excess capacity" theme was repeated in a 1967 background memorandum delineating AISI's import policy. "Present imbalances in world steel trade are caused primarily by the large excess of capacity," the memorandum declared:

> What is more, planned expansion for the future will certainly not diminish and may, in fact, aggravate the problem. A major part of this new capacity was installed in Western Europe and Japan after World War II—much of it within the last five years—and some of it has been built expressly for export purposes.
>
> The continually growing excess of steelmaking capacity in industrialized nations abroad is further complicated by the construction of steelmaking plants in many developing countries. In the last decade some 20 countries have joined the ranks of the steel producers for the first time and more are coming.[315]

Indeed, AISI supported its demand for steel tariffs by suggesting that they "would encourage other nations to fit their steelmaking plans more realistically to world requirements."[316]

In 1973, the AISI chairman, Mr. Cort, again cited "[c]hronic excesses of foreign supply over foreign domestic requirements" as a major cause of the "steel import problems."[317] Another AISI spokesman, Armco's Mr. Verity, underscored what he construed as the ominous and economically irrational trends in developing countries. "They have been disruptive to the U.S. market," Mr.

313. *Long Hearings* (1966), *supra* note 285, at 269 (statement of John P. Roche). "Much of this new capacity was installed in Western Europe and Japan after World War II," Mr. Roche contended, charging "some of it admittedly has been installed for the express purpose of exploiting export markets, particularly the United States." *Id.* at 272.

314. *Id.* Mr. Roche warned that "planned expansion for the future will not diminish and may, in fact, aggravate the problem." *Id. See also Long Hearings* (1967), *supra* note 286, at 828 (statement of John P. Roche); Congressional Breakfast Address, *supra* note 303, at 7.

315. *AISI Background Memo*, *supra* note 286, at 7-8.

316. *Id.* at 2-3. *See also* Detroit Economic Club Address, *supra* note 284, at 6.

317. *Mills Hearings* (1973), *supra* note 287, at 3961-62.

Verity concluded, "and should not be encouraged."[318] Likewise, a spokesman for the specialty metals industry warned of "unregulated and unrestrained foreign investment which is producing over-capacity in specialty steels."[319] By 1978, the AISI characterized such alleged excess capacity as not merely chronic, but "deliberate."[320] In 1981, the president of the Jones & Laughlin Steel Corporation opined that "as long as we have this tremendous European overcapacity that is largely government-owned and government-subsidized, it seems to me quotas against European steel are a peculiarly apt tactic."[321]

Here, also, Steelworker officials concurred with management. "As world steelmaking capacity rose," the Union's Mr. Moloney told the Senate Finance Committee in 1967, "steel-producing nations, with insufficient domestic demand, turned to foreign markets to unload production from excess capacity."[322] "I emphasize again," Mr. Moloney said, "there is an extraordinary over-capacity in steel production . . . [and it is] precisely this acceleration of excess capacity, which has outstripped world demand, that has caused pronounced repercussions upon the American steel industry."[323] Like management, he suggested that "limitations of access to the American market may decrease the tendency for overexpansion of world capacity."[324]

Even a boom market is not likely to solve, and may in fact exacerbate, the excess capacity problem, Steelworkers' Mr. Sheehan told the House Ways and Means Committee in 1970:

> The overseas boom, which has given us brief relief from steel imports, will not last indefinitely. In fact, because part of this steel consumption boom has involved a vast expansion in overseas capacity, rising pressure from foreign imports is inevitable as the overseas boom subsides . . . .
>
> Worse: Because of the high current demand, most foreign producers are expanding at a feverish rate.[325]

"So return to normalcy," Mr. Sheehan warned, "means return to excess capacity."[326]

318. *Id.* at 3968.
319. *Id.* at 3973 (statement of Roger S. Ahlbrandt).
320. *Vanik Hearings* (1978), *supra* note 290, at 80 (statement of Edgar B. Speer, Chairman, American Iron and Steel Institute).
321. *Oberstar Hearings*, *supra* note 292, at 12 (testimony of Thomas C. Graham).
322. *Long Hearings* (1967), *supra* note 286, at 888. *See also Dent Hearings*, *supra* note 293, at 201 (statement of United Steelworkers).
323. *Long Hearings* (1967), *supra* note 286, at 889-90.
324. *Id.* at 893.
325. *Mills Hearings* (1970), *supra* note 305, at 1826.
326. *Id.* In this respect, the Union radically reversed a position it had earlier adopted. Testifying before the Senate Finance Committee in 1966, the Union maintained that, "as far as employment in the steel industry is concerned, the rate of national industrial activity is much more important than the balance of imports and exports. A prosperous year will increase employment of

Throughout the 1970's, the Union held fast to the above diagnosis of the problem. In diverse forums, it repeatedly maintained that "unreasonable imports" result from "international excess steelmaking capacity"; that "excess steel capacity will overhang the world marketplace for several years"; and therefore, that an "international mechanism is needed to achieve quick relief under agreed upon rules as a long term solution to the problems of worldwide over-capacity . . . ."[327]

3. Need for Breathing Space to Make Adjustments

Finally, steel companies and the Union argued that foreign competition deterred sorely-needed domestic investment. Only with suitable protection by the government, they warned, would modernization of the U.S. steel industry proceed. Once again, the argument paralleled that of the auto industry.

Testifying before the House Ways and Means Committee in 1973, the American Iron and Steel Institute declared that an "adequate guarantee against both continuing and spasmodic disruptive increases in imports stimulated by the domestic policies of other countries is essential to the health of both the economy and the industry" and warned committee members that the "threat of such increases is a serious deterrent to expansion of capacity in this country in view of the large sums of capital and the long planning and construction time involved."[328] A spokesman for the specialty steel industry added that "American producers and U.S. capital markets are already reluctant to make future planned and required investments and this reluctance promises to continue."[329]

When next it resurfaced, the argument underscored the importance of "breathing space." "During the long lead time, 5 to 8 years, individual steel companies will need to plan and carry out the needed modernization of their plant and equipment," AISI president Peabody contended before the House Subcommittee on Trade, "the Government must take action to assure that imports do not continue to disrupt our domestic markets through either

steelworkers far greater than a surge of imports will reduce such employment." *Long Hearings* (1966), *supra* note 285, at 237 (statement of Meyer Bernstein, International Affairs Director, United Steelworkers).

327. *Vanik Hearings* (1978), *supra* note 290, at 106, 113-14.

328. *Mills Hearings* (1973), *supra* note 287, at 3963 (statement of Stewart S. Cort, Chairman, American Iron and Steel Institute).

329. *Id.* at 3973 (statement of Roger S. Ahlbrandt, American Specialty Metals Industry). *See also Long Hearings* (1974), *supra* note 290, at 1057 (statement of Mark T. Anthony, Vice President and General Manager, Kaiser Steel Corp.); *Id.* at 1081-82 (statement of Stewart S. Cort, Chairman, American Iron and Steel Institute).

quantity or price."[330] "Only with assurances of this type," he warned, "will our competitive market system commit sufficient capital to steel on the scale required to maintain a modern industry in this country."[331] Similarly, a United States Steel Corporation spokesman urged "a limitation for some temporary period in which the domestic industry can regain its strength."[332]

Union officials, again, dutifully reiterated and re-emphasized management's arguments in a succession of public forums. In 1970, the Union called for an extension of voluntary restraint agreements "or for legislative protection to accomplish one of the stated purposes for the restraint, namely, to provide a lead period for the industry to modernize."[333] Questioned about the conglomerate diversification of Big Steel, the Union's representative, Mr. Sheehan, argued that labor had joined with management on import protection in order to assure that steel earnings would be reinvested in steel facilities:

> One of the reasons that industry gives for its need to diversify or to conglomerate is the fact that their share of our expanding market was being too rapidly seized by foreign imports. So the union joined with the industry and said, "Well let us guarantee or let us moderate that share of the market so as to keep investments of the steel industry in the steel industry, itself."[334]

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330. *Vanik Hearings* (1980), *supra* note 291, at 110.

331. *Id.* at 111.

332. *Id.* at 54 (testimony of John Mangan, Counsel, Western Steel Division, United States Steel Corp.).

333. *Mills Hearings* (1970), *supra* note 305, at 1827 (statement of John J. Sheehan, Legislative Director, United Steelworkers).

334. *Id.* at 1829. Even the Union, however, could scarcely suppress its alarm at U.S. Steel's recent multi-billion dollar acquisition of Marathon Oil:

> When reviewing the status of the steel industry, there is one matter that has drawn particular attention recently, both among those in the private and public sectors. Repeatedly, in these past two weeks, we have been asked for our comments on the efforts by U.S. Steel Corporation, the largest employer of our members, to merge with Marathon Oil. Corporate mergers are not new to the American scene. Conglomerate enterprise raises a host of public and private policy issues, and extends well beyond the mandate of this Subcommittee. We do not see such ventures as compatible with the need for reindustrializing the American enterprise system. Again, it is merely a transfer of wealth made possible by the liberalization of tax laws for corporations, and the willingness of corporations to use capital and debt to finance non-productive exchanges of assets.
>
> With respect to U.S. Steel's multi-billion dollar venture, our own preference is obvious. There is a vital need for modernization of steel facilities. Through modernization we can improve efficiency and enhance the competitive structure of the U.S. steel industry. In this way jobs can be preserved and product markets can be saved or retrieved.
>
> Not even U.S. Steel can boast of having a full range of modern technology in its mills. Unless or until the Corporation undertakes a

Mr. I.W. Abel, president of the Union, reiterated the argument in his testimony before the Senate Finance Committee in 1973:

> You do not build a steel mill for $1 million. It now runs $500 million to build a modern integrated steel mill. This is just an awful lot of capital to raise and to invest and, when there is the danger of foreign competition taking all of the business from you, it is hard to raise that kind of money.[335]

Union spokesmen insisted, as had management, that import protection was essential if modernization was to occur. "We need immediate relief," USW president McBride urged in 1977, "so that the industry can undertake the task of modernization without having its domestic markets stolen during the process."[336] Citing the "desperate need to modernize some of the older mills, particularly in older steel communities," a 1977 union policy statement argued that "imports have not only cost us jobs, they have caused so much idle capacity in our mills, in most of the last 15 years, that our industry has had no incentive to modernize and expand, and many companies have lacked the capital to modernize."[337]

Finally, in 1980, in testimony before the International Trade Commission, management and union agreed that "disruptive" steel imports have a deleterious effect on "the rate of modernization, the addition of new capacity, and the ability of our industry to generate necessary investment capital," and that such imports constitute "a significant discouragement to capital investment."[338]

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full modernization program, it risks the goodwill and trust of its employees and of those outside the industry who are convinced that a revitalization of our steel base in the U.S. is feasible.

Oberstar Hearings, *supra* note 292, at 27 (statement of Lloyd McBride, President, United Steelworkers).

335. *Long Hearings* (1974), *supra* note 290, at 1340.

336. *Vanik Hearings* (1977), *supra* note 295, at 313.

337. *Vanik Hearings* (1978), *supra* note 290, at 109 (testimony of John J. Sheehan, Legislative Director, United Steelworkers).

338. UNITED STEEL WORKERS, THE IMPACT OF STEEL IMPORTS ON DOMESTIC EMPLOYMENT, U.S. INTERNATIONAL TRADE COMMISSION 4 (1980) (testimony of John J. Sheehan, Legislative Director). *See also Oberstar Hearings*, *supra* note 292, at 28 (statement of Lloyd McBride, President, United Steelworkers).

Two additional points should be mentioned in this context. First, Union concerns regarding investment and modernization are not limited solely to the alleged financial needs of the companies. Import competition, of course, undermines the Union's bargaining power—a phenomenon graphically attested to in a 1967 position paper distributed by the Steelworkers:

> [Imported steel] is resented all the more, because it is a kind of scab steel that is coming in. It's steel which weakened our collective bargaining position and interferes with our negotiation of satisfactory agreements. Foreign steel makes a breakdown in contract negotiation a kind of suicide pact, for a full-scale strike, such as we had in 1959, could easily turn the major part of the American market over to overseas producers.

4. Summary: Steel

As shown above, power wielded by firms in an oligopolistic output market conjoined with power of organized labor on the input side to demand governmental neutralization of foreign competition. This exercise of coalescing vertical power has been successful in obtaining a succession of "voluntary" restraints, orderly marketing agreements, and price floors to constrain and restrain imports.[339]

Most recently, the industry has seized upon a compliant administration and the threat of formal complaints before government agencies as the tools with which to forge a world steel cartel. In exchange for American producers' withdrawal of more than forty trade complaints, Common Market producers collectively consented in late 1982 to submit to detailed quantitative restrictions on their exports of a broad range of products to the United States. These restrictions include limiting their combined share of U.S. sales of carbon and alloy steel products to 5.44 percent; pipe and tube products, 5.9 percent; hot rolled sheet and strip, 6.81 percent; cold rolled sheet, 5.11 percent; plates, 5.36 percent; structurals, 9.91 percent; wire rod, 4.29 percent; hot rolled bars, 2.38 percent; coated sheet, 3.27 percent; tin plate, 2.2 percent; rails, 8.9 percent; and sheet piping, 21.85 percent.[340] And, as the chairman of U.S. Steel was quick to point out, this agreement "addressed only 30% of our problems,"[341] thereby serving notice that the industry would soon demand similar arrangements with Japanese and other producers accounting for the remainder of U.S. imports.[342] In response, EEC countries announced that, in light of restraints on their exports to the U.S., they too would move to restrict their imports from other countries.[343] Further, the Reagan administration—attuned to the dismay expressed by Steelworker president McBride at the exclusion of specialty steels from the EEC compact—recently negotiated a parallel, four-year arrangement in this field as well.[344] With regard to this latter development, a prominent business periodical was moved to remark that "seldom does an ac-

United Steelworkers of America, The Import Problem in Steel 4 (1970) (position paper distributed at AFL-CIO Emergency Trade Conference).

Second, the Union has not succeeded in squelching all dissent. "The American steel industry's sick because it has failed to modernize," Ron Wiesen of Local 1253 testified in 1981, concluding that "[i]mported steel may be a symptom, but it is not the disease." *Oberstar Hearings*, *supra* note 292, at 264.

339. Adams, *supra* note 270, at 38-46.
340. Wall St. J., Oct. 22, 1982, at 3, col. 1.
341. Bus. Wk., Nov. 8, 1982, at 42, col. 2.
342. Wall St. J., *supra* note 340, at 3, col. 1.
343. N. Y. Times, Oct. 22, 1982, at 32, col. 1.
344. *Id.* at 36, col. 1; Wall St. J., July 6, 1983, at 3, col. 1.

tion help so few, hurt so many, and anger nearly everyone."[345]

In this industry, then, coalescing vertical power has done more than achieve protection from competition for a domestic oligopoly. It may yet become the catalyst for cartelization of world trade in steel.[346]

IV. SOME ECONOMIC EFFECTS OF COALESCING POWER

The virulence with which management and labor have fought for protectionism in the public as well as private sector affords a striking illustration of tacit vertical collusion and coalescing power in action. It also reflects the common perception by both management and labor that immunity from competition confers private benefits on both groups and, therefore, that government protection from competition is in their rational—albeit, short-run—mutual self-interest. A brief review of the benefits derived by labor and management from protectionism explains the assiduity with which they have mobilized their coalescing power in the political arena. It also gives some indication of the social costs resulting from the exercise of coalescing power.

A. Airline Industry

In the airline industry, for example, Civil Aeronautics Board (CAB) regulation has given management protection against competitive entry and competitive price cutting.[347] While that protection did not yield abnormal profits (because carrier energy was diverted into costlier service such as more flights, more planes, and more frills),[348] it did give management the freedom to lead the quiet life and the discretion to charge exorbitant fares. This is underscored by a comparison of fares and service in California and Texas— where entry is possible and price competition permitted— with CAB controlled rates on interstate flights. Thus, Table 1 shows that in 1976 a traveler between Los Angeles and San Fran-

345. FORTUNE, Aug. 8, 1983, at 55.

346. This is not to say that the coalescence between management and organized labor is at all times perfectly complete. For example, the U.S. Steel Corporation's recent announcement of the possibility that it might import slab steel from abroad for final finishing domestically was denounced by the Steelworkers Union. Wall St. J., June 27, 1983, at 4, col. 1. Yet, by fanning the Union's protectionist fever, this development may very well serve to further solidify the management-labor bloc against import competition.

347. *Kennedy Report* (1975), *supra* note 17, at 77-141.

348. *Id.* at 3.

TABLE 1

COMPARISON BETWEEN INTERSTATE AND INTRASTATE FARES†

City-pair	Fare[1]	Miles[2]	Passengers transported[3]	Block time[4]
*Los Angeles-San Francisco	$18.75	338	[5]7,483,419	:55
Chicago-Minneapolis	38.89	339	1,424,621	1:06
New York-Pittsburgh	37.96	335	975,344	1:05
*Los Angeles-San Diego	10.10	109	2,518,701	:30
*San Francisco-Sacramento	9.73	86	505,148	:30
Portland-Seattle	22.22	129	1,217,381	:35
*Los Angeles-Sacramento	20.47	373	915,077	1:00
Boston-Washington	41.67	399	981,456	1:07
Cleveland-New York	43.52	416	910,270	1:25
Chicago-Kansas City	37.96	404	813,235	1:10
Chicago-Pittsburgh	41.67	413	972,543	1:23
*San Francisco-San Diego	26.21	456	399,639	1:05
Detroit-Philadelphia	45.37	454	313,439	1:25
Dallas/Fort Worth-New Orleans	44.44	442	522,223	1:15
New York-Raleigh/Durham	44.44	423	267,272	1:15
Columbus-New York	47.22	478	294,682	1:18
*Dallas/Fort Worth-Houston	23.15/13.89	239	1,620,000	:50
*Dallas/Fort Worth-San Antonio	23.15/13.89	248	980,000	:50
Las Vegas-Los Angeles	28.70	236	1,181,466	:50
Chicago-St. Louis	29.63	258	953,604	:50
*Houston-San Antonio	23.15/13.89	191	490,000	:40
Boston-New York	24.07	191	2,493,882	:50
Reno-San Francisco	25.93	192	312,811	:46
Miami-Orlando	25.93	193	514,475	:40

† Reprinted from *Kennedy Report* (1975), *supra* note 17, at 41.

* Intrastate market.

[1] Interstate markets: Coach fare, Intrastate markets; Economy fare. Source: "Official Airline Guide," Feb. 1, 1975.

[2] Source: Book of Official CAB Route Maps and Airport-to-Airport Mileages. Most entries are volume-weighted averages of two or more airport-to-airport mileages.

[3] Source: Interstate markets—CAB service segment data, special computer tabulation, reporting period from July 1, 1973 to June 30, 1974. Intrastate markets—California PUC form 1504 report, reporting period from Apr. 1, 1973 to Mar. 31, 1974.

[4] Average scheduled flight time. Source: Official Airline Guide, Feb. 1, 1975.

[5] California markets include traffic to and from suburban airports. Los Angeles-San Francisco includes 12 airport-pairs for example:

LAX-SFO	18.75	338	2,984,985	59.0	:55
ONT-SFO	20.47	363	334,208	60.2	:55

cisco (an intrastate, unregulatedroute) could fly 338 miles for $18.75 while a traveler between Chicago and Minneapolis (a CAB regulated route) had to pay $38.89 for roughly the same distance. Similarly, a traveler between Dallas and Houston (an intrastate, unregulated route) had to pay a maximum of $23.15 for 239 miles while a traveler between Las Vegas and Los Angeles (a CAB regulated route) paid $28.70 for 236 miles.

As Table 1 shows, fares charged in Texas and California in the absence of regulation were approximately 50 to 70 percent of the CAB controlled fares for similar distances and kinds of routes. As the Senate Subcommittee on Administrative Practice and Procedures observed, "[e]xperience in California and Texas suggests that less regulation and more open competition would bring about safe air service with substantially lower fares, more frequent flights, and fewer frills."[349] Obviously airline management saw that prospect as a threat to its vested interests.

Also threatened by the prospect of deregulation was organized labor which found security under the protective umbrella that CAB regulation provided for the airlines. Regulation permitted the carriers not only to charge exorbitant fares but to accede to persistent wage escalation for various categories of airline employees represented by the Airline Pilots Association, the Transport Workers Union, and the Machinists. In 1963, as Table 2 shows, airline employees as a group received an average salary of $7,781, i.e., 1.7 times more than the $4,625 average earned by all workers in the economy. By 1976, the average salary for airline employees had risen to $21,500, or more than double the level of workers generally. The rate of increase over the 1963-1976 period ranged from 168 to 217 percent for airline workers in contrast to 117 percent for workers generally.

TABLE 2

LEVEL AND TRENDS IN DOMESTIC AIRLINE WAGES†

	All Workers[a]	All Airline Employees	Pilots and Copilots	Mechanics
Average annual salary				
1963	$ 4,625	$ 7,781	$18,272	$ 7,434
1976	10,027	21,500	49,000	23,600
Increase, 1963-1976	117%	176%	168%	217%

† Sources: *Economic Report of the President* 256, 268 (1982) (all workers); *Statistical Abstracts of the U.S.* (1965 & 1978) (airline data).

[a] Total wage income divided by total employment.

349. *Id.* at 40.

Clearly, collective bargaining in a government regulated industry, protected from "unbridled" competition, yielded succulent fruits for labor—as well as for management.

B. Trucking Industry

In trucking, the same pattern is observable. Interstate Commerce Commission (ICC) regulation has given management protection against competitive entry and competitive price cutting. As a result, the ICC granted new operating authority only where the proposed service would not divert traffic from existing carriers.[350] Also, the ICC permitted and, indeed, encouraged trucking firms to join rate bureaus to fix rates on particular shipments, and frequently suspended the lower rates filed by independent truckers.[351] Not surprisingly, the net effect of ICC regulation has been to raise rates above the level which would prevail in the absence of regulation.

A number of recent studies document this conclusion.[352] One study, for example, found that average revenue per ton-mile was 6.73 percent lower in "unregulated" Canadian provinces than in regulated provinces and in the United States.[353] Another study—in what can be considered a controlled "before and after" experiment—compared trucking rates for frozen fruits and vegetables when they were classified as "regulated" commodities to trucking rates for the same commodities after they were reclassified by the courts as having "exempt" status. Deregulating the carriage of these commodities resulted in a dramatic price decline: 12 to 59 percent in particular markets for fresh and frozen poultry and a weighted average of 19 percent for frozen fruits and vegetables.[354] Yet a third study, based on a survey by the National Broiler Council, compared the rates on fresh poultry shipped by exempt carri-

350. *Kennedy Report* (1980), *supra* note 17, at 30-31.

351. *Id.* at 80-88.

352. *See, e.g.*, Moore, *The Beneficiaries of Trucking Regulation*, 21 J. L. & ECON. 32 (1978) [hereinafter cited as Moore (1978)]; *Transportation Act of 1972: Hearings Before the Subcomm. on Transportation of the House Comm. on Interstate and Foreign Commerce*, 92d Cong., 2d Sess., pts. 1-3 (1972) [hereinafter cited as *Transportation Hearings*]. *See also* T. MOORE, TRUCKING REGULATION: LESSONS FROM EUROPE (American Enterprise Institute-Hoover Policy Studies, 1975).

353. Sloss, *Regulation of Motor Freight Transportation*, 1 BELL J. ECON. & MGMT. SCI. 327 (1970).

354. SNITZLER AND BYRNES, INTERSTATE TRUCKING OF FROZEN FRUITS AND VEGETABLES UNDER AGRICULTURAL EXEMPTION (U.S.D.A. Marketing Research Rep. No. 316 (1959)); SNITZLER AND BYRNES, INTERSTATE TRUCKING OF FRESH AND FROZEN POULTRY UNDER AGRICULTURAL EXEMPTION (U.S.D.A. Marketing Research Rep. No. 224 (1958)).

ers with rates on cooked poultry shipped by regulated carriers.[355] Over the same routes and between the same points, the unregulated rates were found to be some 33 percent less than the regulated rates.[356] In short, cartelization under the aegis of government regulation had achieved predictable results.

Also predictable was the impact of trucking regulation on organized labor. Aside from the benefits derived by drivers from the additional mileage covered as a result of "deadhead" hauls and circuitous routes, regulation-unionization seems to have resulted in significant wage increases in the industry. Thus, according to one study summarized in Table 3, compensation paid to drivers was more than 30 percent higher than that of their unregulated counterparts.[357]

TABLE 3

AVERAGE ANNUAL EMPLOYEES COMPENSATION IN REGULATED AND UNREGULATED TRUCKING (1972)†

	Regulated	Unregulated	Percentage of Regulated over Unregulated
All Class I—Property	$12,299	$8,504	44.6
Class I—Property (Revenue $1 million—$5 billion)	11,099	8,504	30.5
Class II—Property	10,033	7,566	32.6

† Table reprinted from Moore (1978), *supra* note 352, at 333.

Source: 1 U.S. Bureau of the Census, SC 72-S-7, 1972 Census of Selected Service Industries, tab. 3, at 17 (1973); ICC Transport Statistics in the United States, releases 8 & A (pt. 7, released: Sept. 7, 1972).

A 1973 study indicated that the typical owner-operator (unregulated and not represented by a union) would earn about $11,125 for a 250-day work year, while the average compensation received by the unionized driver for a regulated Class I intercity hauler of general freight was $17,249.[358] After surveying these and other studies, Thomas G. Moore concluded that:

> A conservative estimate of the impact regulation-unionization has on wages of truckers, helpers, and platform workers would therefore be about 50 percent. Some of the evidence suggests the gain could be as large as 55 percent; the most conservative estimate is 37 percent. This implies that

355. *Transportation Hearings*, *supra* note 352.

356. *Id.* at 170.

357. Moore (1978), *supra* note 352, at 32 (quoting U.S. Bureau of Census 1972).

358. D. WYCHOFF & D. MAISTER, THE OWNER-OPERATOR: INDEPENDENT TRUCKER 36 (1975) *quoted in* Moore (1978), *supra* note 352, at 337.

the gains to Teamster members would have been between $1 billion and $1.3 billion in 1972.[359]

When the "rents" received by the owners of ICC certificates and permits ($1.5 to $2 billion in 1972) are added to the above figures, it becomes obvious that the stake that management and labor had in continued regulation of the trucking was substantial.[360] It meant excess revenues for the industry of about $3.4 billion in 1972, of which, according to Moore, between 74 and 97 percent constituted monopoly "rents" accruing to capital and labor.[361]

C. Automobile Industry

Since the end of World War II, automobile prices have followed a typical oligopoly pattern—their outstanding characteristics being uniformity and upward rigidity.[362] As Table 4 shows, the average retail price of new cars, including imports, increased from $3,200 in

TABLE 4

NEW CAR PRICES, IMPORT PENETRATION IN THE U.S. AUTOMOBILE MARKET, AND CONSUMER PRICE INDEX†

Year	Average Yearly Retail Prices (dollars)*	Index of Average Retail Prices for New Cars	Market Share of Imported Cars (percent)
1967	$3,200	100.0	9.3
68	3,240	101.3	10.3
69	3,400	106.3	11.6
70	3,430	107.3	15.2
71	3,730	116.6	15.3
72	3,690	115.3	14.8
73	3,930	122.8	15.4
74	4,390	137.2	15.9
75	4,750	148.4	18.3
76	5,470	170.9	14.8
77	6,120	191.3	18.6
78	6,470	202.2	17.7
79	6,950	217.2	21.9
80	7,530	235.3	26.7
81	8,850	276.6	27.3
82	9,750**	304.7	28.1***

† Price statistics available from National Automobile Dealers Associations; import statistics available from Ward's Automotive Reports.
* includes price of imported cars
** average for first 8 months
*** average for first 10 months

359. Moore (1978), *supra* note 352, at 339.
360. *Id.* at 342.
361. *Id.*
362. *See Senate Judiciary Subcomm. on Antitrust and Monopoly, Administered Prices of Automobiles*, S. Rep. No. 351, 85th Cong., 2d Sess. (1958).

1967 to $9,750 in the first eight months of 1982, or more than 200 percent.[363] Apparently management was loath to abandon its policy of persistent price escalation in spite of the 1974/75 recession, the 1980/82 depression, and the 200 percent increase of the import share in the U.S. domestic market. Management's belief was that if foreign competition constituted a threat to its market control, the most efficacious cure would be mandatory or "voluntary" import quotas negotiated under the protective benevolence of the federal government. In other words, the preferred solution was protection in the form of governmental restraints on competition.

Organized labor's compensation policy during this period was strikingly parallel to management's pricing policy. Between 1967 and 1980, as Table 5 shows,[364] hourly compensation in the motor vehicle industry increased 214 percent compared to a 179 percent increase in manufacturing as a whole; output per worker increased 39 percent compared to 35 percent in manufacturing; unit labor costs increased 127 percent compared to 107 percent in manufacturing.

Charles L. Schultze, a former Chairman of the President's Council of Economic Advisers, summarized the implications of this wage escalation record, stating:

> In the mid-1960s hourly employment costs (wages and fringe benefits) in the major auto companies were about 20% above the average for manufacturing industries. Every three years since, the labor contract negotiated between industry and the union has widened the gap. By 1978 wages and fringes at the major auto companies had risen to almost 50% above the all-manufacturing average. Those extra costs were passed on in higher prices.
>
> Finally, in 1979—faced with mounting interest rates, an incipient recession, sharply higher gasoline prices, growing resistance to large American cars and increased imports from Japan—what did the industry do? It negotiated a contract that by 1980 put auto wages and fringes about 60% above the manufacturing average.[365]

Obviously, the exercise of coalescing power brought consistent short-run gains to both management and labor. But, as one might have predicted, these gains were tenable in the long-run only so long as effective competition could be successfully restrained in the final product market. Hence, as Schultze ruefully observed, "the UAW and the auto industry, calling attention to what is undoubtedly a serious problem of import penetration, are urging the government to validate these gains, and to make possible the price

363. *See supra* Table 4.

364. MICHIGAN FISCAL AND ECONOMIC STRUCTURE 170 (H.E. Brazer ed. 1982) [hereinafter cited as Brazer].

365. Wall St. J., March 20, 1981, at 24, col. 4.

TABLE 5

INDICES OF HOURLY LABOR COMPENSATION, OUTPUT PER EMPLOYEE AND UNIT LABOR COST IN THE MOTOR VEHICLES INDUSTRY AND IN ALL MANUFACTURING IN THE UNITED STATES (1967=100)†

YEAR	Compensation		Output Per Worker		Unit Labor Cost	
	Motor Vehicles	All Mfgs.	Motor Vehicles	All Mfgs.	Motor Vehicles	All Mfgs.
1967	100	100	100	100	100	100
1968	107	107	106	104	101	103
1969	113	115	105	105	108	109
1970	122	122	103	105	119	117
1971	139	130	117	112	119	117
1972	148	137	120	117	123	117
1973	159	147	122	122	130	119
1974	178	162	121	121	148	135
1975	200	182	128	124	156	147
1976	218	196	134	129	162	151
1977	243	212	143	133	170	160
1978	265	230	142	134	187	172
1979	284	252	139	135	205	187
1980	314	279	139[1]	135	227	207

† Table reprinted from Brazer, *supra* note 364 at 170.

Notes [1]The statistic in this cell was missing. It was conservatively assumed to remain the same as in 1979 (in line with all manufacturing although by reason of the severe depression in the industry there is reason to believe that it might have been lower.

All figures are rounded, but calculations were made at the first decimal level.

Because of data constraints, the series for all manufacturing applies to all employees, while that for Motor Vehicles applies only to production workers. However, it was possible to compare the output per hour series for all employees and for production workers in the auto industry throughout the entire period: they are almost indentical. Likewise, it was possible to compare the hourly compensation series for all employees and for production workers in "al manufacturing" for the last six years: they are very similar.

Sources: The *all manufacturing data* are from the BLS. "International Comparisons of Manufacturing Productivity and Labor Costs," May 20, 1981. For autos, the data are from the BLS. Indices of Output Per Employee (1967=100) in Motor Vehicles and Equipment" and "Estimated Hourly Compensation of Production Workers in the Motor Vehicles and Equipment Industry, 14 countries, 1975-1980." With an adjusted census of manufacturing series going back to 1967.

increases necessary to pay for them, with import protection."[366]

In short, price/wage escalation, effectuated through the exercise of coalescing power, is possible only in protected markets artificially shielded from the impact of competition.

366. *Id.*

D. Steel Industry

Prior to the burgeoning of steel imports of the 1960's, and the long strike of 1959, the domestic steel industry used its formidable oligopoly power to engineer a persistent increase in steel prices.[367] According to the Council of Economic Advisers, these price increases were a principal feature of successive cost-push inflations in the post-World War II period:

> Steel prices played an important role in the general price increases of the 1950s. Between 1947 and 1951, the average increase in the price of basic steel products was 9 percent per year, twice the average increase of all wholesale prices. The unique behavior of steel prices was most pronounced in the mid-1950's While the wholesale price index was falling an average of 0.9 percent annually from 1951 to 1955, the price index for steel was rising an average of 4.8 percent per year. From 1955 to 1958, steel prices were increasing 7.1 percent annually, or almost three times as fast as wholesale prices generally. No other major sector shows a similar record.[368]

During the 1960's, largely because of significantly intensifying import competition, the upward pressure of steel prices was somewhat attenuated. Between January, 1960 and December, 1968, a period of nine years, the composite steel price index increased 4.1 points—or .45 points per year.[369] Starting in January, 1969, however, after the State Department had successfully persuaded the Europeans and Japanese to accept "voluntary" quotas on their sales to the United States (that is, to enter into an informal international steel cartel), imports were cut back drastically and domestic steel prices resumed their pre-1960 climb. In the four years between January, 1969 and December, 1972, the steel price index rose 26.7 points—or 6.67 points per year.[370] Stated differently, after the import quotas went into effect, the annual rate of increase in steel prices was fourteen times greater than it had been in the nine years prior thereto. Once again, through the use of coalescing power, management and labor have achieved their foreseeable goal: that is, the development of a protectionist economic climate under which both can thrive at an annual cost to the United States economy variously estimated at between 338 million and 1 billion

367. W. ADAMS, *supra* note 203, at 92-99.

368. COUNCIL OF ECONOMIC ADVISORS, REPORT TO THE PRESIDENT ON STEEL PRICES 8-9 (April 1975).

369. *See* COMPTROLLER GENERAL OF THE UNITED STATES, ECONOMIC AND FOREIGN POLICY EFFECTS OF VOLUNTARY RESTRAINT AGREEMENTS ON TEXTILES AND STEEL, REPORT B-179, 342 at 23 (1974) [hereinafter cited as COMPTROLLER GENERAL].

370. *Id.*

dollars.[371]

The Trigger Price Mechanism had similar consequences. Its quantitative impact was substantial. On December 7, 1977, one day after the concept of trigger pricing was announced by President Carter, a steel company executive stated that United States steel prices would be increased in the first quarter of 1978. Shortly thereafter, a 5.5 percent increase—reduced from an original 10.5 percent increase—in the domestic price of basic steel products was posted. This was followed by a further price rise of 1.1 percent in April, 1978.[372]

On May 10, 1978, the United States Treasury Department announced that it was raising trigger prices by 5.5 percent on sheet, plate, wire, and cold-finished bars; 13.9 percent on angles; 14 percent on reinforcing bars; and 14.5 percent on flat bars.[373] On August 2, the Treasury Department raised the trigger prices by another 4.86 percent, effective October 1, 1978;[374] trigger price increases for the calendar year 1978 totalled 10.6 percent.

While domestic steelmakers had raised their list prices by some 9.5 percent as of October 1, 1978, steel buyers reported that the prices they actually had to pay increased by as much as 15 percent because, as the *Wall Street Journal* noted, "last fall's widespread discounting . . . evaporated."[375]

The inflationary impact on the United States economy was, of course, profound. Considering only the original trigger prices announced by the Treasury in January, 1978, the Federal Trade Commission, for instance, estimated the direct cost increase to steel consumers at $1 billion.[376] An official of the Brookings Institute estimated that the direct price effect could be as much as $1.5 billion.[377] Kurt Orban, a steel importer and international expert on steel markets, found that the trigger price system had resulted in a veritable price explosion and estimated the increased steel costs to consumers at $4 billion.[378] Finally, if the domestic steel industry is to be believed in its claim that imports have caused transaction prices to be $60 per ton below list prices, then estimates of increased steel costs could range up to $6 billion. These estimates, it should be noted, were based on the trigger prices of January, 1978,

371. Magee, *The Welfare Effects of Restrictions on U.S. Trade*, BROOKINGS PAPERS 645-701 (1972); COMPTROLLER GENERAL, *supra* note 369, at 23.
372. Adams, *supra* note 270, at 42.
373. 43 Fed. Reg. 20,020 (1978) (to be codified at 26 C.F.R. § 31).
374. 43 Fed. Reg. 33,993 (1978).
375. Wall St. J., Sept. 26, 1978, at 1, col. 1.
376. FEDERAL TRADE COMMISSION, THE UNITED STATES STEEL INDUSTRY AND ITS INTERNATIONAL RIVALS 559-65 (1977).
377. Wall St. J., *supra* note 375, at 1, col. 1.
378. American Metal Market, March 29, 1978, at 1, col. 3.

and do not, therefore, take account of their 10.63 percent increase the following year.

Organized labor, of course, derived short-run gains from this protectionism, which permitted the steel industry to play its price escalation game with virtual impunity. Between 1964 and 1980, as Table 6 shows, hourly compensation in iron and steel increased by 282 percent compared to 212 percent in manufacturing as a whole; output per hour increased 19 percent and 40 percent, respectively; and unit labor cost increased 221 percent and 123 percent, respectively.[379]

TABLE 6

INDICES OF LABOR COMPENSATION, PRODUCTIVITY, AND UNIT LABOR COST IN IRON AND STEEL AND ALL MANUFACTURING FOR 1972-80 (1964=100) IN THE UNITED STATES†

YEAR	Hourly Compensation		Output Per Hour		Unit Labor Cost	
	Iron and Steel	All M'gs.	Iron and Steel	All Mfgs.	Iron and Steel	All Mfgs.
1964	100	100	100	100	100	100
1972	161	153	116	122	138	125
1973	176	165	121	129	145	128
1974	202	182	124	126	163	145
1975	239	204	116	129	206	157
1976	257	220	120	134	215	163
1977	277	238	116	138	239	172
1978	308	258	125	139	246	185
1979	341	283	124	141	276	201
1980	382	312	119	140	321	223

† Brazer, *supra* note 364, at 166.

As was found to be the case in the automobile industry, the gap between hourly employment costs in the steel industry and manufacturing as a whole widened; according to Charles Schultze, the cost differential rose from 25 percent in the mid-1960's to 60 percent in 1980.[380] This record, when superimposed on constantly escalating prices, meant declining competitiveness for the steel industry, and militated toward protectionist governmental restraints on foreign competition—a bailout from the self-inflicted injury wrought by the exercise of coalescing power.

379. Brazer, *supra* note 364, at 166.

380. Wall St. J., *supra* note 365, at 24, col. 4.

V. CONCLUSION

The foregoing case studies document the efforts of a labor-management coalition in four major industries to secure governmental restraints on competition. The coalition partners advocated positions that were uncannily parallel and substantively indistinguishable. They advanced and endlessly reiterated arguments that were couched in virtually identical rhetoric.

Unless these case studies are egregiously unrepresentative of American industrial structure, some general conclusions and public policy implications are *a propos*:

1. In industries where producers possess monopoly (or oligopoly) power in the product market, and where powerful trade unions dominate the relevant labor markets, there is an almost irresistable tendency toward tacit (if not, overt) vertical collusion. Countervailing power—ostensibly a structural safeguard of the public interest—is transmuted into coalescing power—a ready instrument for subverting the public interest.

2. Tacit vertical collusion and coalescing power are sustainable only where product markets are immune from effective competition. Hence, a paramount objective of the labor-industrial complex is to obtain and/or preserve governmental protection from competition in the form of entry controls, minimum rate regulation, immunity from the antitrust laws, import restraints, etc.

3. The exercise of tacit vertical collusion and coalescing power has both micro-economic and macro-economic consequences. On the micro-economic level, it militates toward noncompetitive structure in the affected industries which, in turn, leads to noncompetitive conduct which, ultimately, produces deficient industrial performance.

4. On the macro-economic level, the most serious consequence of tacit vertical collusion is a seemingly uncontrollable process of cumulative price-wage-price escalation—an engine of cost-push inflation that undermines the effectiveness of macro-stabilization policies. As Professor Henry C. Simons of the University of Chicago recognized over three decades ago, the efficacy of such macro-economic tools as monetary and fiscal policy vitally hinges upon an economy's underlying micro-economic market structure. "No amount of monetary or fiscal stimulation," he wrote,

> will give us adequate employment or investment, if strategically situated unions and enterpriser monopolists insist upon utilizing improved demand conditions to increase their wages and prices rather than to increase employment, investment, and output—or to hold up prices where improved technology is markedly reducing costs. And there is no reason why organized producer groups, holding adequate organizational and political power, should, acting in their separate interest, forego the opportunity to improve their relative position in such circumstances. They may,

> to be sure, injure themselves along with the community, all or most of them being worse off by virtue of their restrictive measures than if none had practiced them. But each group may be better off than if it alone had behaved less monopolistically; and, short of dictatorship at one extreme and real competition at the other, there would appear to be no means for getting co-ordinated or co-operative action from such groups as a whole.[381]

Simons concluded that "[t]he inherent conflict of interest between each producer group and the community . . . must be reconciled or avoided, either by the discipline of effective intragroup competition or by the dictation of absolute authority from above."[382]

The only viable policy option, we suggest, lies in vigorous enforcement of the nation's antitrust statutes to obtain and maintain structurally competitive markets—for the sake of industry-specific performance, for macro-economic stability, and, perhaps not insignificantly, for freedom from dictation of absolute authority from above.

381. H. SIMONS, ECONOMIC POLICY FOR A FREE SOCIETY 115 (1948).

382. *Id.* at 120. Professor Olson recently arrived at a similar conclusion. "The most important macroeconomic policy implication," to be drawn from his exhaustive examination of stagflation, unemployment, and business cycles, he states, "is that the best macroeconomic policy is a good microeconomic policy . . . . If combinations dominate markets throughout the economy and the government is always intervening on behalf of special interests, there is no macroeconomic policy that can put things right." M. OLSON, THE RISE AND DECLINE OF NATIONS 233 (1982).

National Training Incentives Act
H.R. 5159
Issues for Discussion

BUDGETARY COSTS

Charge: The National Training Incentives Act will be very costly at a time of huge budget deficits.

Rebuttal: This bill provides two approaches for retraining, neither of which requires direct federal outlays. The first approach, the IRA and annuity provisions, which allow workers to withdraw money from these accounts for their own retraining, builds upon an existing private finance system. The second approach, the 25% tax credit, in contrast with federal training programs which require one dollar in federal outlays for every dollar spent on training, would generate four dollars in private sector training for every dollar in lost federal revenues. These incentives will have no cost to the federal Treasury unless business and workers themselves decide that more money needs to be spent on retraining.

This legislation also responds to the need for U.S. business and industry to compete in a global economy. Without a sufficiently trained work force, America's competitive position will significantly deteriorate, resulting in a lower standard of living for virtually all Americans. Moreover, absent such policies, increased protectionism would likely result, producing higher costs to consumers for imported products.

LEGISLATIVE IMPACT

Charge: This legislation does not assist those most in need -- low-income, low-skilled workers.

Rebuttal: This legislation is designed to address the problems associated with worker displacement. The low-income, low-skilled workers have been and are now the beneficiaries of numerous governmental initiatives, most recently the Job Training Partnership Act.

The 25% tax credit will help currently employed workers avoid future displacement through increased employer-sponsored retraining programs. Furthermore, the tax credit could be used by small businesses or unprofitable firms because of its carry-forward and carry-back provisions. The IRA and annuity provision provides individuals who are unemployed and collecting unemployment insurance with an increased capability to finance their own retraining without having to divert funds from their own day-to-day income. At the end of 1982, over 12 million individuals held IRA accounts, with over five million of these held by individuals with annual household incomes below $30,000.

DOES RETRAINING HELP?

Charge: Those who are faced with unemployment do not readily adapt to training nor do they have the flexibility or resources to undertake retraining on their own.

Rebuttal: Employer financed retraining through tax credits will involve workers who have a demonstrated ability to be trained and who already function effectively in industry. The IRA provision, because it involves employee funds, creates an incentive whereby employees who seek retraining have a greater personal stake in the selection and quality of their retraining.

Moreover, in the 1980s the work force growth rate will be only half as much as it was in the last decade. As a result, today's workers will constitute over 90% of the labor force in 1990. Also by 1990, over half of all U.S. workers will be between the ages of 24 and 44 -- the most productive years for workers. This represents a major opportunity to increase productivity if these workers can be adequately trained or retrained.

IMPACT ON HOLDERS OF IRAs AND ANNUITIES

Charge: Withdrawals would hurt those companies in the financial services industry that hold IRA and annuity accounts.

Rebuttal: Workers who have IRAs or annuities would likely withdraw funds from their accounts if they were to be displaced from their employment. Allowing this money to be used for retraining will only shorten the time of displacement and encourage people to use their withdrawals for training, because of the limited penalties incurred by such withdrawals.

Moreover, the effect on financial institutions of withdrawals is offset by provisions within the bill that allow the rate of return to be adjusted according to the time the account was held. Canada has in place similar legislation which provides for no assessment of penalties for withdrawals from these accounts. Neither the financial institutions nor the levels of participation have been adversely affected under the Canadian legislation. Furthermore, expanding IRA investment funds to include retraining adds greater incentive to participate in IRA accounts. Lastly, individual withdrawals are limited to a maximum of $4,000 over any five-year period.

EMPLOYER PARTICIPATION:

Charge: A corporation and an individual could pay into a joint account to be used by the worker in the event of displacement.

Rebuttal: Under this bill there is nothing to prevent an employer from contributing to an IRA for retraining or retirement. Moreover, under the current IRA mechanism, employers can contribute to an employee's retirement account.

The problem with other approaches, such as an Individual Training Account, is that they require joint employer-employee participation, and that employees seeking such an account would depend upon the willingness of their employers to participate. As a result, the only way to ensure the establishment of a training account would be to mandate employer-employee participation. This would amount to the creation of a new and costly payroll tax at a time when Congress is unable to raise funds to pay the nation's current bills.

EMPLOYER INCENTIVES

Charge: Since an employer can take a deduction for retraining, why is this legislation necessary?

Rebuttal: This bill recognizes that the importance of investment in worker retraining is similar to the importance of investment in R&D and equipment. Specifically, the bill permits employers to deduct a portion of employee training and retraining expenses from federal tax liability. Firms could deduct from their tax liability 25% of training costs above the company's training costs of the previous five years. This differs substantially from a straight-line business-expense deduction, which could still be used with the tax credit, but which fails by itself to differentiate one type of business-expense from another. Moreover, the tax credit will not reward current retraining, but will reward retraining over and above a five-year average.

AN EXPLANATION OF THE
THE NATIONAL TRAINING INCENTIVES ACT OF 1984

Fundamental weaknesses in the U.S. work force were revealed during the last recession. Incentives to train or retrain workers were virtually non-existent. Many of those displaced from their old jobs were either ill-equipped to enter a new occupation or financially incapable of acquiring new skills. Moreover, employers and workers alike were poorly served by the Employment Service and by the nationwide system of unemployment benefits provided as income assistance. In many cases benefits ran out without facilitating a meaningful transition to gainful employment or to a new occupation.

The intent of this legislation is to provide incentives for worker training, both through employer and individual incentives, to examine the cost, feasibility, and expected benefits of a nationwide job bank system, and to assess the possibility of using non-profit community-based organizations to assist low-skilled individuals in finding work.

Title I of the bill is designed to assist structurally unemployed workers by allowing them to use for retraining funds invested in Individual Retirement Accounts (IRAs) or annuities. The bill permits an unemployed individual or one who has received advance notice of layoff to withdraw without the existing 10% interest penalty up to $4,000 for the purpose of financing occupational training.

Any individual who is unemployed, has obtained job counseling within the last year, and meets certain basic requirements under the unemployment compensation law may make withdrawals from IRAs or annuities for training purposes. Those who have received a notice of layoff within six months may also make withdrawals. The individual must first obtain employment counseling from a local employment office before withdrawals can be made; the employment office then certifies in writing that an individual is eligible to make such withdrawals, using criteria established under existing unemployment compensation law.

The certificate of eligibility, along with an invoice or other evidence of enrollment from a qualified training institution, is then presented by the individual to the trustee (bank or other financial institution) of the IRA or annuity. The amount needed (up to $4,000) is then issued to the training institution in the form of a voucher and is not taxable. The voucher can be used to pay a variety of expenses associated with the training program, including books, tuition, fees, materials, and special tools or equipment.

Training programs that individuals may pursue under this legislation are in general any programs offered by a qualified institution (an institution of higher education, a postsecondary vocational institution, a proprietary institution of higher education, and those institutions meeting criteria established by the Secretary of Labor) which prepares participants for gainful employment. The statutory definitions of "training program" and "qualified institution" track those in existing law, and anti-discrimination provisions are applied to all qualified institutions and eligible training programs.

Title I also removes a disincentive against retraining by providing that any displaced worker otherwise eligible for unemployment compensation shall not be denied such payment due to participation in a training program.

Title II of the bill permits employers to deduct from their tax liability 25% of any skills training expenses in excess of the average skills training expenses incurred by the employer over the preceding five-year period. This provision is modeled after the existing 25% R&D tax credit, enacted in 1981 to encourage private research, and is designed to provide a tax incentive for new training programs sponsored, paid for, or conducted by employers.

The employer may apply the tax credit to expenditures for any state or federally registered apprenticeship program, any employer-run on-the-job or classroom training program, any cooperative education, or any other program designated by the Secretary of Labor. The training tax credit conforms to existing carryback and carryforward provisions found in the tax code which apply to the R&D credit.

Title III of the bill directs the Secretary of Labor to report to Congress within one year on the extent to which a nationwide job bank system can be expected to increase employment opportunities in each state, its cost, and its adaptability to existing unemployment services. The Secretary must also assess in the report the feasibility of using nonprofit, privately-operated job-referral services for the referral of individuals to jobs in low-wage industries where little or no skill is a prerequisite for employment rather than using state employment service offices. Title III also authorizes funds to cover administrative expenses incurred through the counseling and certification process; this amount ($37 million) is equivalent to 5% of the current administrative budget for the U.S. Employment Service.

Title IV amends the Job Training Partnership Act to instruct Private Industry Councils (PICs) to make available throughout service delivery areas information regarding training programs. Title IV also provides that, for the purposes of determining eligibility for Pell grants, any amount withdrawn from an IRA or annuity for training purposes as well as any amount received in the form of unemployment compensation shall not be included as family income.

INDIVIDUAL RETIREMENT ACCOUNTS

1982 Returns

$1.00-15,000		1,293,090
$15,000-50,000		8,221,566
$50,000-more		2,583,650
	TOTAL	12,098,306
$1.00-15,000		1,293,090
$15,000-25,000		2,211,990
$25,000-50,000		6,009,576
$50,000-more		2,583,650
	TOTAL	12,098,306
$30,000 and below		4,980,117
$30,000-more		7,118,189
	TOTAL	12,098,306
$25,000 and below		3,505,080
$25,000-50,000		6,009,576
$50,000-more		2,583,650
	TOTAL	12,098,306

Source: Statistics of Income Bulletin: Department of the Treasury, Internal Revenue Service, Vol. 3, No. 3, Winter 1983-1984, P. 18.

H.R. 5159
NATIONAL TRAINING INCENTIVES ACT

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Tuesday, April 17, 1984

The Washington Post

LETTERS TO THE EDITOR

The Hart Retraining Proposal

While we agree with The Post's editorial "Sen. Hart's Retraining Idea" [March 26], which noted that our proposal as compared with the Hart approach "would minimize the payroll burden," we disagree with the assertion that "it wouldn't help the millions of workers who don't have a retirement account or ensure that the training is useful."

First, allowing displaced workers to use IRA funds, tax-free and without penalty, for retraining is only a part of our overall approach. To help prevent future widespread displacement, our proposal also includes a tax credit for businesses to retrain their existing work force.

This would be similar to the existing R&D tax credit, and would permit businesses to deduct from their tax liability 25 percent of training costs above their average for the last five years. In contrast with current federal training programs, which require one dollar in outlays for every dollar spent on retraining, this approach would generate four dollars in private sector training for every dollar in lost revenues.

This approach also removes the bias in the tax code against investment in training. Existing government tax incentives for business investment (nearly $50 billion) are more than 70 times greater than the value (about $600 million) of tax incentives for worker training.

Further, at present, most states prohibit retraining while a person is collecting unemployment insurance. This discourages retraining and runs up unemployment outlays. Our bill removes this disincentive, but the editorial fails to mention this and the fact that the IRA provision in our proposal would reach millions of households. In fact, IRS statistics for 1982 show that more than 12 million people held IRAs, with over 75 percent of these held by individuals with lower-to middle-level household incomes.

Last, our approach offers the best chance to ensure that training will be useful. Decisions regarding type and quality of training are best made by those who have a direct stake in the training. Our approach establishes this link by putting into place incentives that are triggered only when business and workers decide for themselves to finance additional skills training.

BILL CLINGER
U.S. Representative (R-Pa.)

NANCY JOHNSON
U.S. Representative (R-Conn.)

Washington

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DIGEST OF DRAFT LEGISLATION TO BE PROPOSED BY REPRESENTATIVE NANCY L. JOHNSON OF CONNECTICUT, PROVIDING FOR INCENTIVES FOR WORKER TRAINING THROUGH BOTH EMPLOYER AND INDIVIDUAL INITIATIVE AND TO REQUIRE THE SECRETARY OF LABOR TO STUDY THE FEASIBILITY AND COST OF A NATIONAL JOB BANK

Prepared at Congressional Request

Robert Burlington
American Law Division
Bill Digest Section
March 12, 1984

37-791 O—84——15

DIGEST OF DRAFT LEGISLATION TO BE PROPOSED BY REPRESENTATIVE NANCY L. JOHNSON OF CONNECTICUT, PROVIDING FOR INCENTIVES FOR WORKER TRAINING THROUGH BOTH EMPLOYER AND INDIVIDUAL INITIATIVE AND TO REQUIRE THE SECRETARY OF LABOR TO STUDY THE FEASIBILITY AND COST OF A NATIONAL JOB BANK

The following is a digest (section by section) of draft legislation which provides for "incentives for worker training through both employer and individual initiative and to require the Secretary of Labor to study the feasibility and cost of a National Job Bank."

National Training Incentives Act of 1984 - Declares that it is the policy and responsibility of the Federal Government to encourage cooperation between employers and employees to promote training programs which will assist employees who might be displaced from the work force in training for a trade or occupation for which present and future employment opportunities exist.

Enumerates congressional findings with respect to the inadequacies of existing employment and training programs, the importance of such programs to the national security and economy, the current funding of such programs, the impact of foreign trade competition on the U.S. economy and job market, and the inadequacies of the unemployment compensation system.

Title I: Withdrawals from Individual Retirement Accounts and Annuities for Job Training for Displaced Workers - Entitles a displaced worker to apply to the Secretary of Labor (Secretary) for certification of such individual's status as a displaced worker. Defines a "displaced worker" as any individual who, at the time of application for a certificate: (1) has at least 20 quarters of coverage under title II (Old Age, Survivors and Disability Insurance) of the Social Security Act; (2) has received employment counseling within the past

year from an agency approved by the Secretary; (3) is receiving, or has exhausted the right to receive, regular State unemployment compensation; (4) has become unemployed or has received notification of termination of employment due to the permanent closure of the plant or facility at which employed; or (5) has been unemployed for six months or more and has limited opportunity for employment in the same or similar trade or occupation within a reasonable commuting distance.

Permits displaced workers to withdraw amounts from their individual retirement account or annuity (IRA) to pay the expenses (tuition, fees, books, supplies, or required equipment) of an eligible training program. Limits the amount of such IRA withdrawal to $4,000 per year (with cost-of-living adjustments), minus aggregate amounts distributed for training expense payments in the four immediately preceding taxable years. Defines "eligible training program" as a training program offered by an institution of higher education, a postsecondary vocational institution, or any other institution approved by the Secretary which prepares students for gainful employment in a trade or occupation in which present and future employment opportunities exist. Requires the Secretary to promulgate regulations for: (1) the qualification of an educational institution to offer eligible training programs; and (2) criteria for determining whether a job training program qualifies as an eligible training program under the terms of this Act. Directs the Secretary, for purposes of determining whether certain job training programs qualify as eligible training programs, to consider any determination relating to such programs made by: (1) the Administrator of Veterans Affairs or a State approving agency for veterans' educational programs; (2) the private industry council established under the Job Training Partnership Act or other official

empowered to make determinations under such Act; (3) the Secretary of Education; (4) any State education agency; or (5) a nationally recognized accrediting agency which the Secretary determines to be reliable in evaluating the quality of job training programs. Disqualifies any institution which discriminates against a displaced worker in providing job training.

Requires withdrawals from an IRA for training expenses to be made only through the use of a voucher issued by the account trustee or insurance company custodian upon presentation to such trustee or custodian by the displaced worker of a displaced worker certificate and an invoice or statement evidencing that such worker has enrolled in an eligible training program. Sets forth requirements for the presentation and redemption of vouchers for payment of job training expenses. Prohibits the assessment of any penalty against a displaced worker for withdrawals from an IRA to pay training expenses.

Provides that the participation of displaced workers in an eligible training program shall not disqualify such workers for unemployment compensation to which they are otherwise entitled.

Requires the Secretary to minimize the amount of paperwork and time necessary to certify any individual as a displaced worker or any training program as an eligible training program.

Title II: Amendments to the Internal Revenue Code of 1954 Relating to Employee Training - Amends the Internal Revenue Code to exempt distributions from an individual retirement account or annuity (IRA) of a displaced worker from any penalty tax if such distributions are made to pay training expenses, do not exceed the allowable amount, and are made in accordance with the requirements of this Act. Incorporates provisions of title I of this Act

relating to the definition of displaced workers, training expenses, and allowable IRA distributions within the Internal Revenue Code provisions relating to individual retirement accounts and annuities.

Allows employers a nonrefundable income tax credit for 25 percent of the training expenses incurred in connection with the training of employees under approved training programs. Defines "approved training programs" to include: (1) any apprenticeship program registered or approved by Federal or State agencies; (2) an employer-designed training program approved by the Secretary; (3) any cooperative education; (4) any training program designated by the Secretary which is carried out under the supervision of an institution of higher education; or (5) any other training program approved by the Secretary.

Sets forth rules for the computation of training expenses eligible for the tax credit. Permits a carryback and carryover of unused training credit amounts. Sets forth special tax rules for the aggregation of qualified training expenses within a controlled group of corporations, allocation of such expenses, and adjustments to the credit amount for acquisitions and dispositions of a trade or business. Specifies that the training expense credit shall be in addition to any other deduction or credit allowed for the same expenses under the Federal tax law.

Title III: State Employment Service Responsibilities Certification and Referral - Allocates to the States funds to administer public employment offices which provide certification for displaced workers, labor market and training information, and job search services. Authorizes appropriations for FY 1985 and thereafter.

Directs the Secretary to submit a report to the Congress on a computer job

bank system.

Title IV: Miscellaneous Provisions - Amends the Job Training Partnership Act to direct the private industry council established under such Act to make available information on job training programs throughout its service delivery area. Exempts such council from limitations on expenditures imposed by such Act in providing such information.

Excludes from the computation of the amount of the expected family contribution to a student for Pell Grant purposes any unemployment compensation received by such student or any IRA distribution used to pay training expenses of such student, provided such student is certified as a displaced worker under the terms of this Act.

AMERICAN SOCIETY FOR TRAINING AND DEVELOPMENT, INC
SUITE 305 / 600 MARYLAND AVENUE S.W. / WASHINGTON, D.C. 20024 / PHONE 202 / 484-2390

April 27, 1984

Mr. Steven Hofman
Executive Director
The House Wednesday Group
386 HOB Annex #2
Washington, D.C. 20515

Dear Steve:

Thanks for meeting with our National Issues Committee. In the Committee deliberations the day following your visit, the consensus was quite positive on H.R. 5159, The National Training Incentives Act. We do have some comments on details that we think would be important to the purposes of the proposed legislation.

First, we believe that improving the quality and competence of the work force is a key factor in national economic survival and growth in the new world marketplace.

Further, the role of employer-provided education and training the work force is the most important single factor in the on-going development of a competent work force. Thus, we believe that we need more of it even though it is now the largest element, by far, in work force retraining.

One significant benefit of the employer tax incentive approach is that the investment in our human capital would necessarily be strongly needs-related because employers would be spending their own money for what they really need, not for obsolete or irrelevant training.

Assuming the several wrinkles can be ironed out, our organization will undoubtedly support the legislation actively. I think this would be important to the bill since our group represents the constituency that would be most directly affected -- except, of course, the overall work force.

1. We think it important that the employer tax credit be in addition to the present practice of treating training costs as ordinary business expenses. Otherwise, I'm afraid there would not be sufficent incentive for many employers to participate.

2. Regarding the employer tax credit, we strongly suggest that the definition of "training" be changed. Much of the best employee training is not conducted in a "classroom," per se. Sophisticated employee training is often accomplished very efficiently through methodologies such as computer-assisted instruction, labs, workshops, self-directed programs, etc.

The term "supervised on the-job-experience" is likely to lead to trouble, too. Just about all "on-the-job-experience" is supervised so you could have employers reading that as all work qualifies for the tax credit which probably is not what you had in mind. We would suggest a definition of training such as we are using in our research project on data gathering for employer-provided education and training. It is contained in the enclosed memo we are using for a field test on the questionnaire we've just developed.

Unfortunately, as we explained at the meeting, current corporate practices in cost accounting for training leave much to be desired. Many employers have only the sketchiest information about what they spend for employee training, and among those who do, there is little consistency in format.

I have just collected samples of training cost accounting practices from a group of our members and they hardly resemble each other at all. (I'll be glad to show them to you if you like.)

Thus, we suggest that the legislation prescribe the kinds of expenses that would be allowable under the tax credit in some detail. I know that prescriptive details in legislation has its drawbacks, too, but should this legislation be enacted, some direction to the regulation writers would be entirely in order.

We know from experience with the Employee Educational Assistance tax regulations, that regulation interpretation can easily lead to widespread confusion, unintended results and tax court litigation.

To help avoid some of the anticipated problems with allowable costs, we have enclosed a brief classification scheme for training costs. This is based on our previous work in this area and the sample cost "charts of account" we have just reviewed. This might be simplified a bit more for legislative purposes, but we do suggest that the legislation include intent about what kinds of training costs would be allowable.

3. I think our view could well be to support the use of IRA funds that the bill proposes, too, but we would like to see the IRA data you mentioned and are sending along.

I hope this is helpful, and please let us know if we can do anything further.

Thanks again. We do appreciate your initiative in what we see as virtually the first positive Congressional initiative that would directly build a more competent overall work force.

Very truly yours,

Robert L. Craig
Vice President
Government Affairs

RLC:vh

Enclosure

The National Individual Training Account Act

Facts on:

- **The Program**
- **Who it would help**
- **How it would work**
- **How it would be financed**
- **Tax benefits**

Developed by the

Northeast-Midwest Congressional Coalition

Economic Change

New technologies, increased foreign competition, and the demand for new products and services have resulted in basic shifts in our national economy and structural unemployment throughout the nation's industrial heartland. Just as a trained, up-to-date work force is essential for a competitive America, the key to reemployment for many workers is the acquisition of new occupational skills.

The Gap in Public Policy

Our current unemployment insurance system provides important income support for displaced workers. However, workers in this situation often do not have the financial resources to purchase the retraining that could lead to reemployment and an equal or higher standard of living. In many states, unemployed workers actually are prohibited by law from enrolling in retraining programs while they are collecting unemployment insurance. This "catch-22" forces laid-off workers to make the difficult choice between minimal income support for their families today and getting the training necessary to insure that their families will have adequate income tomorrow. For most unemployed workers this choice is meaningless, because the temporary income provided by unemployment insurance is crucial to meet family living expenses.

Individual Training Accounts

In 1983 the Northeast-Midwest Congressional and Senate Coalitions and the Northeast-Midwest Institute conducted a series of field hearings and a national conference to explore the public policy implications of economic change and the employment and training needs of the region's workers. During this agenda-building process, Individual Training Accounts (ITAs) were suggested as one way to address the needs of unemployed workers who have little prospect of returning to their former jobs.

The National Individual Training Account Act was introduced in February 1984 by Representatives Richard J. Durbin (D-Illinois) and Sherwood L. Boehlert (R-New York), and has drawn broad bipartisan support. The bill offers an innovative, imaginative response to a pressing national priority, without creating a new federal bureaucracy or requiring staggering appropriations.

The bill would allow workers and employers to purchase retraining insurance to be used if a worker becomes involuntarily unemployed. The program would be voluntary and self-financing. Equally important, retraining benefits could be used while the participant collects unemployment insurance, so a minimum standard of family income need not be sacrificed during retraining.

Key Features

• **Voluntary.** Participation in the ITA program would be entirely voluntary; both workers and their employers would have to agree to participate.

• **Self-financing.** The program would be financed by contributions from employers and employees at the annual rate of 0.8 percent of the worker's salary or $250, whichever was less. In addition, the ITA would operate like a whole life insurance policy; workers who had participated for at least six months would be eligible for up to $4,000 of retraining coverage. Individuals whose accounts were worth more than $4,000 due to accumulated interest could draw up to the full amount. This insurance would be purchased through an annual assessment of $25 per account ($12.50 each from the employer and employee). The balance of the contribution would build up equity and interest over time until the account reached $4,000, at which point no further contributions would be necessary. The account would continue to accrue interest after reaching $4,000.

• **Flexible.** ITA vouchers could be used to purchase up to $4,000 or more of training through a certified educational or training facility of the worker's choice; under certain conditions up to $1,000 could be used for relocation assistance.

• **Rational Use of Tax Incentives.** Current tax incentives reward investment in future productivity through capital spending. ITAs would reward companies and workers for investing in the future through improved worker productivity. Businesses would receive a 125 percent tax deduction on annual contributions, and workers could deduct 100 percent of the contributions from taxable income. Funds unused by the worker at the time of disability or retirement would be divided between the worker and employer. Refunds would be subject to taxes. For participants who did not draw from the ITA account during their working lives, the refund could be as much as $35,000.

• **Clear Eligibility Criteria.** Participating workers who lost their jobs involuntarily and who were eligible for unemployment insurance could use ITA funds for retraining or limited relocation expenses.

• **Local Administration.** The program would be administered locally through Employment Service offices. To assure that individuals can purchase retraining that is consistent with local labor market demands and that enhances individual competencies, participants would be required to receive job counseling through the local Employment Service before being issued a voucher.

• **Minimum Burden on Taxpayers.** The administrative costs of the ITA program would be financed through an assessment of less than 1 percent on the ITA accounts – not by federal appropriations. The only cost to the federal government would be lost tax revenues, and these would be recaptured in part through increased worker productivity and earning power and taxes on refunds to companies and workers.

Answers to Some Important Questions

Q. Who will benefit from the National Individual Training Account Act?

A. This legislation would help a specific portion of the labor force—those who are working but may need retraining at intervals during their careers to remain productive and employable. The program also would help industry by upgrading the skills of workers in areas with available labor.

Q. Who would pay for this new program?

A. The program would be self-financing; that is, it would be paid for by those who benefit from it. Equal contributions would be made by workers and employers. The program would require no new appropriations of tax dollars. Costs to the government of administering the program would be paid by an assessment on ITA accounts.

Q. Could workers withdraw ITA funds for purposes other than retraining or relocation assistance?

A. No. ITA funds would be held at the Treasury Department and invested in high-yield accounts in the name of the worker. These funds could be used to purchase vouchers for education, training, or relocation assistance for workers who become unemployed involuntarily. Unused funds would be divided between the worker and employer at the time of retirement or disability; in the event of a worker's death, the refund would go to the estate.

Q. Would the ITA program be linked with the unemployment insurance system?

A. The ITA program would complement the current UI system; ITA contributions would be held in a separate account in the UI trust fund. Participants could use their ITA funds while collecting unemployment benefits.

"ITAs would give needed balance to current U.S. tax incentives for business development, which overwhelmingly favor capital and technology investments as a route to productivity growth. The third basic element—worker training—would be addressed in part by the National Individual Training Account Act."

Rep. Richard J. Durbin
D-Illinois

"Congress rarely has a chance to prevent the crises of tomorrow. ITAs would help ensure that in 1992 we won't still be trying to solve the problems we faced in 1982."

Rep. Sherwood L. Boehlert
R-New York

"ITAs are the long-term key to giving our workers the skills that will keep them employable and spur economic growth."

Rep. Mary Rose Oakar
D-Ohio

The Northeast-Midwest Congressional Coalition is a bipartisan alliance of nearly 200 members of Congress from the 18 states that form the nation's industrial heartland. The Coalition seeks to inform its members about the regional impact of national policies and to influence those issues of greatest importance to the region.

For further information on the Coalition and the National Individual Training Account Act, please contact:

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